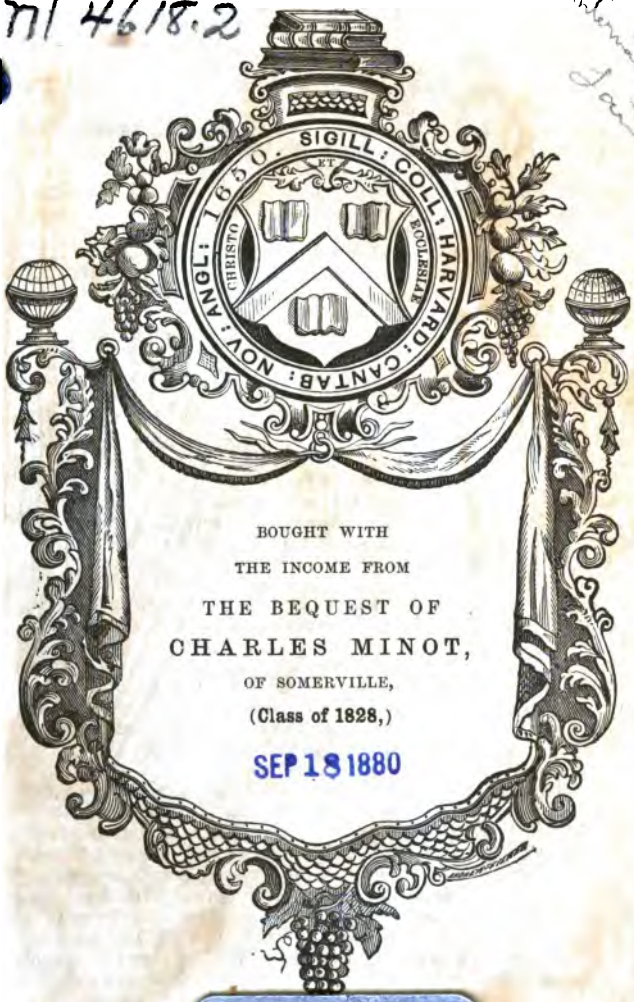

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THE RIGHTS

OF

BRITISH AND NEUTRAL COMMERCE,

AS AFFECTED BY

RECENT ROYAL DECLARATIONS

AND

ORDERS IN COUNCIL.

BY

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THE importance, as well as the novelty of the concessions made to the interests of commerce in the present war, have induced me to endeavour to explain in a concise form their legal effects. And, in order that the reader may the more readily comprehend the nature and extent of these concessions, I have prefixed a summary of the rights of maritime war which had previously been both claimed and exercised by Great Britain.

5, ESSEX COURT, TEMPLE,
12*th June*, 1854.

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CHAPTER I.

RIGHTS OF MARITIME WARFARE HITHERTO CLAIMED AND EXERCISED BY GREAT BRITAIN.

That certain rights may be justly exercised by nations in time of war, to which they can lay no claim in time of peace, is an axiom universally received; and it requires little reflection to perceive that the exercise of these rights is the inevitable consequence of a state of hostility. A strict observance of the precepts of humanity and equity is incompatible with the systematic violence sanctioned by the usages of war; and when nations decide upon settling their differences by force of arms, not only the parties engaged, but others who have no interest in the quarrel, must of necessity be affected by the results. Rights of war.

To define the rights which thus appertain to belligerent powers is the province of the Law of Nations—a branch of jurisprudence recognised in every civilized state, and authoritatively declared to be a part of the common law of this kingdom (*a*). In practice, however, it has been found a task of much greater difficulty to define the rights of naval than those of territorial warfare. The questions arising out of the latter are comparatively few in number, and generally capable of solution, according to principles long established; but the discussions to which the rights of maritime warfare have given rise, during the last two centuries, are of endless Naval war.

(*a*) Blackstone Commen. Book 4, c. 5.

variety, and the speculations of jurists upon the subject have been no less conflicting than the policy of rival states. During the progress of the last general war these questions became the frequent subject of dispute between different powers, and the rights claimed and exercised by Great Britain were objects of especial controversy both in Europe and America. Many and formidable were the efforts made to induce her to relinquish a portion of these rights, but she continued, nevertheless, to maintain and to exercise them until the termination of the war. It is important, therefore, to ascertain the nature and extent of these rights; and we find that in the year 1801 they were formally declared and defined in the following terms (*a*):—

Rule of 1756.

1. That it is not lawful to neutral nations to carry on in time of war, for the advantage or on the behalf of one of the belligerent powers, those branches of its commerce from which they are excluded in time of peace.

Capture of enemy's property.

2. That every belligerent power may capture the property of its enemies wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.

Contraband.

3. That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent powers, the law of nations (if not restrained by special treaty) includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent power the instruments and means of annoyance to be used against the other.

Blockade.

4. That it is lawful to naval powers, when engaged in war, to blockade the ports of their enemies by cruising squadrons *bonâ fide* allotted to that service, and fairly competent to its execu-

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(*a*) See Parliamentary History, vol. 36, p. 211.

tion. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort, or arsenal to which it is applied. And that the fact of the blockade, coupled with due notice thereof to neutral powers, shall affect, not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of the blockade.

Right of Search.

5. That the right of visiting and examining neutral vessels is a necessary consequence of these principles; and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships, either of its own nation or of any other country.

Such were the rules formally announced by the British government at the beginning of the present century, as applicable by the law of nations to maritime warfare. But, in addition to these, we may observe that two belligerent rights have at all times been acknowledged as prerogatives of the Crown, of which the foregoing rules make no mention. The first of these is the privilege of issuing letters of marque and commissioning privateers; the second is the right, which England has always asserted, of impressing her own subjects out of neutral merchant ships in time of war. The first of these rights is a universally acknowledged attribute of independent sovereignty; the second is a necessary result of the English doctrine of allegiance, which does not permit the subject, by any act of his own, to dissolve the natural and inherent obligation under which he may be called upon, at any time and in any place, to render military service to the Crown.

Commissioning Privateers.

Impressment.

But these principles of maritime law have not been universally recognised by foreign states. In the course of the seventeenth century the Dutch

made many attempts to modify the rule which gives to a belligerent power the right of seizing the goods of an enemy in a neutral ship. Perceiving the great advantage which they would derive from an uninterrupted commerce while their neighbours were engaged in war, the statesmen of Holland sought to introduce into the maritime law of Europe the doctrine of "Free ships free goods (*a*)." But although they succeeded, by means of special treaties, with several states, in accomplishing their object, they entirely failed to obtain any general recognition of this rule as a fundamental portion of the law of nations. In the year 1745, Frederick the Second of Prussia revived the discussion of this question by withholding payment of the Silesian loan from certain English merchants in retaliation, as he alleged, for the capture of neutral Prussian vessels during the war at that time existing between England and France. But after a protracted investigation, in which various eminent persons (*b*) took part upon either side, the claim of Prussia was finally withdrawn, and the ancient rule seems to

Free ships free goods.

(*a*) This rule seems to have been first conceded by the Ottoman government, in a treaty with Henry the Fourth of France, concluded in the year 1604. The liberal views generally entertained by that government on the subject of foreign commerce have often been the subject of remark; and of these we have an early and striking instance in this treaty. Kent Commen. vol. 1, p. 118.

(*b*) The commissioners in England were the attorney and solicitor generals (afterwards Lord Mansfield), and two doctors of civil law. In their report, dated 18th January, 1753, they laid down the three following propositions:—

"That the goods of an enemy on board the ship of a friend may be taken.

"That the lawful goods of a friend on board the ship of an enemy ought to be restored.

"That contraband goods going to the enemy though the property of a friend may be taken as prize." Wheaton's Hist. of Modern Law of Nations, 210.

have been once more established as a necessary incident of maritime warfare.

The claim first set up by Holland and revived by Prussia, was again put forward in the year 1780, by a combination of the Northern powers of Europe, who, under the designation of the Armed Neutrality, declared their intention of introducing an improved code of maritime law, and of maintaining it by force. It would be here entirely out of place to trace the origin and progress of this celebrated league, of which Catharine of Russia was the acknowledged head. Suffice it to say that the security and freedom of neutral commerce were the declared objects of the confederacy, and the principles, sought to be established, were announced by the Empress of Russia to the different European courts in the following terms: Armed Neutrality.

1. That all neutral vessels may freely navigate from port to port, and on the coasts of nations at war.

2. That the goods belonging to the subjects of the powers at war shall be free in neutral vessels, except contraband articles.

3. That the empress, as to the specification of the above mentioned goods, holds to what is mentioned in the 10th and 11th articles of her treaty (*c*) of commerce with Great Britain, extending these obligations to all the powers at war. and its demands.

4. That to determine what is meant by a blockaded port, this denomination is only to be given to that where there is by the arrangements of the power which attacks it with vessels stationed sufficiently near, an evident danger in attempting to enter it.

(*c*) This treaty, concluded in 1766, limited contraband to articles directly serviceable in war; and the 11th article defines these to be "canons, mortiers, armes à feu, pistolets, grenades, boulets, balles, fusils, pierres à feu, mêches, poudre, salpetre, souffre, cuirasses, piques, épées, ceintures, poches à cartouche, selles et brides." Martens Recueil des Traités, tom. 1, p. 395.

To the terms thus proposed, the following powers were induced to assent, viz., Denmark, Sweden, Prussia, France, Spain, Portugal, Holland and Naples. But Great Britain, though at that time involved in a war as well with France and Spain as with her American colonies, declined to accede to the proposals of the armed neutrality. She replied to the Russian declaration by simply stating that she had up to that time observed towards neutrals those rules of international law which were generally held to be binding upon nations in the absence of treaties, and she left it to be inferred that she would still continue to observe them. The proposed innovations were indeed generally regarded as a systematic attempt on the part of the Northern powers to undermine the maritime power of Britain, and as such they were steadily resisted. The peace concluded at Versailles in 1783, put an end for a time to the controversy, but in the year 1800, the pretensions of the Baltic powers were once more revived. The Emperor Paul placed himself at the head of this new confederacy as his predecessor had done before him, and conjointly with Denmark and Sweden, proclaimed anew the principles asserted by the armed neutrality in 1780. A rupture with England was the immediate result; but the sudden death of the Russian emperor, and the capture of Copenhagen (*d*) by the British fleet very shortly afterwards, dissolved this second confederacy.

War with Russia.

A convention was afterwards entered into between Great Britain and Russia, in which important concessions were made upon both sides. The former on the one hand agreed to admit the demands of Russia with respect to the freedom of navigating upon the coasts of nations at war; she agreed also to limit contraband to such articles as were immediately serviceable in war, and finally she adopted the definition of a blockade contained in the declaration of the armed neutrality. Russia

Convention with Russia.

(*d*) 2nd April, 1801.

upon her part conceded the principle which two successive sovereigns had vainly sought to establish, viz., that a neutral flag should protect an enemy's goods. Upon this point the ancient rule of maritime law was recognised by both the contracting powers (*e*).

Concessions on the part of England.

These concessions on the part of England were the subject of warm discussion. It was contended by their opponents that such relaxations of her belligerent rights were impolitic to the last degree, as they must necessarily have the effect of impairing her maritime power (*f*). The advocates of the convention, on the other hand, insisted that the concessions made to Russia were comparatively unimportant, whereas that power had yielded to England the main point in dispute since the year 1780, viz., that free ships should make free cargoes (*g*). But these discussions were brought to an unexpected termination. In July 1807, the treaty of Tilsit was concluded between France and Russia, and in October of that year the Emperor Alexander issued a proclamation, in which

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(*e*) Wheaton's Hist. of Law of Nations, 401.

(*f*) See the very able speech of Lord Grenville in the House of Lords, 13th Nov. 1801. Parliamentary History, vol. 36.

(*g*) Among those who approved of the convention may be named Lord Nelson, who had acted so conspicuous a part in the war with the northern powers in 1801. But he did so apparently on the ground that it would put an end to the most important right for which the Baltic powers contended. "The convention," he said, "had put an end to the principle endeavoured to be enforced by the armed neutrality in 1780, and by the late combination of the northern powers that free ships make free goods,—a proposition so monstrous in itself, so contrary to the law of nations, and so injurious to the maritime interests of this country, that if it had been persisted in we ought not to have concluded the war with those powers while a single man, a single shilling, or even a single drop of blood remained in the country." See Debate of House of Lords, 13th Nov. 1801.

he declared that he annulled for ever, "every preceding convention between England and Russia, and particularly that entered into in 1801." He also proclaimed anew the principles of the armed neutrality, "that monument of the wisdom of the Empress Catharine," and engaged that he should never depart from them.

Fresh disputes with Russia.

A reply to this declaration was issued by the British government on the 18th December of the same year, reasserting the belligerent rights which it had claimed and exercised previous to the convention with Russia in 1801, in the following terms:

"His majesty proclaims anew those principles of maritime law against which the armed neutrality, under the auspices of the Empress Catharine, was originally directed, and against which the present hostilities of Russia are denounced. These principles have been recognised and acted upon in the best periods of the history of Europe, and acted upon by no power with more strictness and severity than by Russia herself in the reign of the Empress Catharine. These principles it is the right and the duty of his majesty to maintain; and against every confederacy his majesty is determined under the blessing of Divine Providence to maintain them" (*h*).

British declaration.

Disputes with the United States.

A dispute subsequently arose between Great Britain and the United States upon various points of maritime law. The former complained of the capture of their vessels while engaged in the colonial and coasting trade of France. They complained also of the illegality of the system of blockade established by the British cruisers on the coasts of the European continent, in retaliation of the Berlin and Milan decrees of the Emperor Napoleon; and, lastly, they alleged that American citizens had been impressed from on board their merchant ships under the pretext that they were

(*h*) Annual Register, vol. 49.

subjects of the King of England. The war commenced upon these grounds was terminated by the treaty of peace signed at Ghent in the year 1814, on the basis of the *status quo ante bellum*. The questions therefore in which the war had its origin were passed over in silence (*i*).

Treaties of 1814 and 1815.

The treaties subsequently concluded by the representatives of the great European powers at Paris and Vienna, in the years 1814 and 1815, are equally silent upon those controverted points of maritime law. The principles consistently maintained by Great Britain throughout the whole of the last war, and not abandoned on the restoration of peace, must sillt therefore be regarded as unshaken. Although a relaxation upon several points was made in 1801 in favor of a particular power, we have seen that, immediately after that power had repudiated its engagements, the Crown reasserted its rights in the most emphatic manner. The whole of these rights were freely exercised until the close of the last war, and it is impossible to doubt that they are all still within the prerogative of the sovereign. Before proceeding, therefore, to matters of more recent interest, I shall briefly examine in detail the propositions put forward in 1801.

(*i*) Wheaton's Hist. of Law of Nations, 585.

Section 1.

"*That it is not lawful to neutral nations to carry on in time of war, for the advantage or on the behalf of one of the belligerent powers, those branches of commerce from which they are excluded in time of peace*" (*k*).

Rule of 1756.

This rule, known as the rule of 1756, has been usually applied in our wars with France and Spain. It was the policy of those countries to maintain a strict monopoly both of their colonial and their coasting trade in time of peace. But in time of war they frequently relaxed this monopoly in favor of certain neutral nations in order that their supplies might not be cut off by means of our superior naval power. In the war of 1756, the Dutch were admitted to a share of the colonial and coasting trade of France, and they complained that, as neutrals, their traffic should be interfered with. This was also a grievance put forward by the armed neutrality in 1780, and at a later date by the United States. These complaints gave rise to much discussion about the beginning of the present century, and the rule in question was condemned by various continental and American writers as an unjustifiable infringement of the freedom of commerce. On the other hand it was contended that if a relaxation of fiscal laws was made in favor of certain states in time of war, to

(*k*) "Quæritur quid facere aut non facere possunt inter duos hostes. Omnia forte inquies quæ potuerunt *cum pax esset inter eos*, quos inter nunc bellum est." Bynkershoek Quæst. Juris. Pub. l. 9.

induce them for the advantage of a belligerent power to embark in a trade from which they were excluded in time of peace, they must be considered as having abandoned the neutral character. As such relaxations were made only from necessity, it was alleged that any state which took advantage of them, and thus supplied a belligerent power with commodities which it could not otherwise obtain, in reality interfered in the war. The general rule, that neutrals shall not be excluded from any trade in time of war to which they have access in time of peace, is universally acknowledged; but to afford them commercial advantages in time of war from which they are debarred in time of peace would be to introduce a new and a very dangerous principle into the law of nations. Were such a principle established, it would be the manifest interest of all commercial states to promote and perpetuate dissensions among their neighbours (*l*). Its objects.

Lord Stowell, in the following terms, points out the practical inconveniences which might result from the recognition of such a doctrine.

"As to the coasting trade, supposing it to be a trade not usually open to foreign vessels, can there be described a more effective accommodation that can be given to an enemy, during a war, than to undertake it for him during his own disability (*m*)? Is it nothing that the commodities of an extensive empire are conveyed from the parts where they grow and are manufactured to other parts where they are wanted for use? It is said that this is not importing anything new into the country, and it certainly is not; but has it not all the effects of Approved by Lord Stowell.

(*l*) See upon this question Madison's Examination of the British doctrine which subjects to capture a neutral trade not open in time of Peace. Lond. 1806. Ward's Treatise on the relative Rights and Duties of Belligerent and Neutral Powers. Sect. 1, p. 11. Discourse on Neutral Nations, by Charles Jenkinson (the late Lord Liverpool).

(*m*) *The Emmanuel*, 1 Rob. Adm. Rep. 300.

such an importation? Suppose that the French navy had a decided ascendant, and had cut off all British communication between the Northern and Southern parts of the island, and that neutrals interposed to bring the coals of the North for the supply of the manufacturer, and for the necessities of domestic life in the metropolis, is it possible to describe a more direct and more effectual opposition to the success of French hostility short of an actual military assistance in the war?"

Coasting trade.

Section 2.

"*That every belligerent power may capture the property of its enemies wherever it shall be met with on the high seas, and may, for that purpose, detain and bring into port neutral vessels laden wholly or in part with any such property.*"

Antiquity of this rule.

This doctrine has been recognised by the different maritime states of Europe for many centuries. It is to be found in the *Consolato del mare;* and we may add, that the rules laid down upon the subject in that ancient compilation are identical with those still observed in the admiralty courts of Britain. They are as follows: "If the captured vessel is neutral property, and the cargo the property of enemies, the captor may compel the merchant vessel to carry the enemy's cargo to a place of safety, where the prize may be secured from all danger of recapture; paying to the vessel the *whole* freight which she would have earned at her delivering ports (*n*)."

The general recognition of this doctrine, as well

(*n*) Consolato del Mare, cap. 273. The date of this work is uncertain. An Italian origin was long assigned to it by the civilians; but it is now ascertained that it first appeared at Barcelona, probably during the fourteenth century. Wheaton's Hist. of Modern Law of Nations, 61. Hallam's Middle Ages, vol. 3, p. 397.

by the most celebrated jurists as by the practice of maritime nations, is a fact established beyond dispute, and the following may be shortly stated as the reasons advanced in its support. In naval warfare it is an object of the first importance to weaken the resources of the enemy by injuring or destroying his foreign commerce; and this can only be effectually done by intercepting it upon the high seas, even although protected by a neutral flag. But it is evident that this interference involves a conflict of rights and interests between the belligerent and the neutral. To reconcile these rights is impossible, for one of the two must, of necessity, give way to the other. We have therefore no means of deciding upon these competing claims, but by comparing their relative importance; and the inconvenience which the neutral may suffer, through the occasional interruption of his commerce, cannot weigh in the balance against the serious injury which the abandonment of the right in question might inflict upon the belligerent power. Were this right renounced, the whole foreign commerce of an enemy might be carried on under the protection of a neutral flag, and a contest between two maritime states might thus be indefinitely prolonged, to the general disturbance of the great society of nations.

Reasons for maintaining it.

The attempts made first by Holland and subsequently by the Baltic powers to overturn this rule, and to introduce in its stead the doctrine of *free ships, free goods*, have been already noticed. But the latter principle has never been recognised by England, except by special treaty with particular states (*o*). Neither has it been recognised by the tribunals of the United States.

Opposed by Holland.

"There is a marked difference," observes Mr. Chancellor Kent, "in the rights of war carried on

(*o*) Ex. gr. with Portugal in 1654, with France in 1677, with Holland in 1688. See Jenkinson's (Lord Liverpool) Discourse on the conduct of Great Britain in respect to neutral nations, p. 48. Edit. 1801.

by land and at sea. The object of a maritime war is the destruction of the enemy's commerce and navigation, in order to weaken or destroy the foundations of his naval power. The capture or destruction of private property is essential to that end, and it is allowed in maritime wars by the law and practice of nations" (*p*).

Rule recognised by United States.

The same author in another place observes, "During the whole course of the wars growing out of the French revolution the government of the United States admitted the English rule to be valid, as the true and settled doctrine of international law; and that enemy's property was liable to seizure on board of neutral ships, and to be confiscated as prize of war" (*q*). He further remarks that he considers this right of seizure and confiscation "to be no longer an open question; and that the authority and usage on which that right rests in Europe, and the long, explicit, and authoritative admission of it by this country (the United States) have concluded us from making it a subject of controversy; and that we are bound in truth and justice to submit to its regular exercise, in every case, and with every belligerent power who does not freely renounce it" (*r*).

Freight.

In case of capture the master of the neutral ship is entitled to freight for the carriage of the enemy's goods. Such has been the uniform practice of the English Courts of Admiralty for two centuries at least. And the freight is paid *in toto* and not *pro rata*, because the capture is considered delivery of the goods (*s*).

It is also a very ancient rule of maritime law, and recognised both in England and America, that the property of a neutral taken on board an enemy's ship shall be restored. "The two distinct propo-

(*p*) Commentaries, Part 1, Lecture 5.
(*q*) Id. Part 1, Lecture 6.
(*r*) Id. Part 1, p. 122.
(*s*) *The Copenhagen*, 1 Rob. 289.

sitions," says Mr. Chancellor Kent, "that enemy's goods found on board a neutral ship may be lawfully seized as prize of war, and that the goods of a neutral found on board an enemy's vessel were to be restored, have been explicitly incorporated into the jurisprudence of the United States, and declared by the Supreme Courts to be founded in the law of nations. The rule, as it was observed by the court, rested on the simple and intelligible principle that war gave a full right to capture the goods of an enemy, but gave no right to capture the goods of a friend. The neutral flag constituted no protection to enemy's property, and the belligerent flag communicated no hostile character to neutral property. The character of the property depended upon the fact of ownership, and not upon the character of the vehicle in which it is found" (*t*).

Property of neutral in an enemy's ship.

Property taken by an enemy at sea is restored to its original owner *jure postliminii*, upon recapture. The recaptor in this case is entitled to salvage; and restitution must be claimed within a reasonable time (*u*). What that may be will depend upon the circumstances of the case; but the rule as to restitution has received a liberal construction in British courts. And the same privileges are extended to the recaptured property of allies, unless it can be shewn that they adopt a less indulgent rule. In that case their own rule will be adopted as regards them upon principles of strict reciprocity (*v*).

Jus postliminii.

(*t*) Commentaries, Part 1, Lecture 6.
(*u*) *The Mentor*, 1 Rob. 179.
(*v*) *The Santa Cruz*, 1 Rob. 49.

SECTION 3.

"*That under the description of contraband of war, which neutrals are prohibited from carrying to the belligerent powers, the law of nations (if not restrained by special treaty) includes all naval as well as all military stores; and generally all articles serving principally, according to the circumstances of the war, to afford to one belligerent power the instruments and means of annoyance to be used against the other.*"

Difficulty of defining.

There is a considerable difference of opinion among foreign jurists as to what articles are to be deemed contraband of war, for while the earlier authorities confine them principally to such materials as may be rendered immediately serviceable for warlike purposes, later writers give to the term a much more extensive signification. Vattel, for example, includes under the definition of contraband not only military stores, but "timber, and all materials which are requisite for the construction and equipment of vessels of war, horses, and even in certain cases provisions, when there is a hope of reducing the enemy by famine" (*w*).

The rules respecting contraband have, in fact, within the last two centuries, undergone considerable variation. Sir Leoline Jenkins, Judge of the Court of Admiralty in the reign of Charles the Second, in a letter addressed to that prince in the year 1674 on the subject of certain naval stores taken on board a Swedish ship, says, "These goods, if they be not made unfree by being found in an unfree

Naval stores.

(*w*) L. 3, c. 7, s. 112.

bottom, cannot be judged by any other law than the law of nations; and then I am humbly of opinion that nothing ought to be judged contraband by that law in this case, but what is *directly and immediately* subservient to the uses of war, &c." (*x*).

The same rules were observed in France at that time, as may be seen from the marine Ordinance of 1681 (*y*), which applies only to military stores. According to Valin naval stores were first generally recognised as contraband during the war of the Spanish succession in the beginning of the eighteenth century. Spain had previously condemned them as such; (*z*) but the rule was then adopted, and has been since retained both by France and England, unless where exceptions have been made by special treaty. French and Spanish law.

In a celebrated case determined by Lord Stowell in 1799, that learned Judge states, "that tar, pitch, and hemp, going to the enemy's use, are liable to be seized as contraband in their own nature, cannot, I conceive, be doubted under the modern law of nations; though formerly when the hostilities of Europe were less naval than they have since become, they were of a *disputable* nature" (*a*). And he states in the same case, "that in the year 1750, the Lords of Appeal in this country declared pitch and tar, the produce of Sweden, and on board a Swedish ship bound to a French port, to be contraband, and subject to confiscation in the memorable case of the *Med Goods Hjelpe*" (*b*). Tar, pitch, &c.

According to Valin (*c*), resin, sailcloth, hemp, cordage, masts and ship timber, are also contra- Other articles.

(*x*) Life of Sir L. Jenkins, vol. 2, p. 751.
(*y*) Ordonnance de la Marine, liv. 3, tit. 9, des Prises, vol. 11.
(*z*) Life of Sir L. Jenkins, vol. 2, p. 751.
(*a*) Robinson's Admiralty Reports, vol. 1, p. 372.
(*b*) Id. vol. 1, p. 373.
(*c*) Commentaire sur l'Ordonnance, liv. 3, tit. 9, des Prises, art. 11.

band; and in the treaty concluded between England and Denmark in 1780, these articles are specially designated as such. This treaty provided that in order to leave no doubt upon what is to be understood by the term contraband, it is agreed that this denomination is meant only to comprehend fire arms and weapons of other kinds, with their accoutrements, as cannons, muskets, &c., (here follows a minute specification), "and generally all other warlike accoutrements; also ship timber, tar, pitch, resin, sheet copper, sails, hemp, and generally whatever serves for the equipment of ships; unwrought iron and deal planks excepted" (*d*).

Treaty with Denmark.

With the United States.

In the treaty of commerce and navigation concluded between Great Britain and the United States in 1794, it was stipulated (Art. 18), that under the denomination of contraband, should be comprised military and *naval* stores, "unwrought iron and fir planks only excepted" (*e*).

With Russia.

In the convention between Great Britain and Russia concluded in 1801, and already referred to, it was agreed that naval stores should not be held as contraband. Under this head the following articles were alone to be considered contraband by the contracting powers, viz. (see Art. 3), "cannons, mortars, fire arms, pistols, bombs, grenades, balls, bullets, fire locks, flints, matches, powder, saltpetre, sulphur, helmets, pikes, swords, sword belts, pouches, saddles and bridles." It was further declared, "that all other articles whatever, not enumerated here, shall not be reputed warlike and naval ammunition, nor be subject to confiscation."

This treaty, as we have seen, was annulled by the two powers in 1807 (*f*); so that according to the law of nations as administered in the English admiralty courts, naval stores are still regarded as contraband of war.

(*d*) Martens Recueil des Traités, tom. 3, p. 177.
(*e*) Wheaton's Modern Law of Nations, 379.
(*f*) *Ante*, p. 8.

Exceptions.

But an exception has been made in favour of certain naval stores, provided they are in a raw and unmanufactured state, and provided they are the produce of the country from which they are exported. In this case they are subject not to confiscation, but to preemption by the capturing power at a reasonable price. Pitch and tar from Sweden, being staple articles of export from that country, have been held to fall under this rule; but the same articles coming from Prussia, would not be regarded with equal favour, unless it were proved that they were the *bonâ fide* produce of that country (*g*).

Raw and manufactured articles.

A distinction of a similar kind has been drawn with respect to several other articles. Thus hemp, the produce of the exporting country, has been held not liable to condemnation (*h*); but sailcloth is universally held to be contraband (*i*). A cargo of timber for shipbuilding has been restored (*k*); but the court observed it would have been otherwise had the ship been bound for a port of naval equipment (*l*). If the timber had been prepared for immediate use it would also have been liable to condemnation; for masts, spars, &c., have long been considered contraband (*m*). Whether unwrought iron is *per se* contraband does not appear to have been expressly decided, and we have seen that in several treaties it has been specially excepted; but anchors and other articles manufactured from iron for the equipment of ships are unquestionably contraband (*n*). In determining cases of this doubtful nature two points appear to have been principally kept in view. In the first

(*g*) *The Sarah Christina*, 1 Rob. 237.
(*h*) *The Apollo*, 4 Rob. 158.
(*i*) *The Neptunus*, 3 Rob. 108.
(*k*) *The Twende Brodre*, 4 Rob. 33.
(*l*) See also *The Endraught*, 1 Rob. 23.
(*m*) *The Charlotte*, 5 Rob. 305.
(*n*) *The Jonge Margaretta*, 1 Rob. 194.

place, an important distinction has been drawn between articles in their raw and in their manufactured state; and, in the second, it is of still more consequence to ascertain whether they are intended for ordinary use in the country to which they are consigned, or whether they are intended for naval or military purposes. The port of destination, in this case, affords a fair test of intention. If it is an ordinary commercial port, the goods may be considered, without proof to the contrary, as having been shipped in the usual course of trade. But a destination to a port of naval or military equipment will raise a serious presumption against the innocence of the cargo: and this presumption will be materially strengthened, by the fact, that a demand notoriously exists there at the time, for the articles in question.

Ports of destination.

Provisions.

With respect to provisions the same rules have been generally held to apply (*o*). Grotius says that the question of whether they are contraband or not must be determined by circumstances; and, practically, this is still the case. Provisions destined for a port or place of naval or military equipment were generally condemned by the British admiralty courts during the last war. Thus a cargo of Dutch cheese (*p*) bound for Brest, where the French fleet lay, was condemned. A cargo of wine (*q*), laden on board a Prussian ship, and bound for the same port, shared the same fate; and American sea biscuit (*r*) going to Cadiz, where a hostile squadron was preparing for sea, were also condemned. In each of these three cases the articles in question were held to be naval stores adapted for the use of the enemy.

Cheese.

Wine.

Biscuit.

On the 8th of June, 1793, an order in council was issued authorizing British cruizers to detain

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(*o*) De Jure Belli et Pacis, lib. 3, cap. 1.
(*p*) *The Jonge Margaretha*, 1 Rob. 191.
(*q*) *The Edward*, 4 Rob. 68.
(*r*) *The Ranger*, 6 Rob. 125.

all vessels laden with corn, flour, or meal, bound to any port in France, or any port occupied by the armies of France, and to send them into a British port in order to subject the cargoes to the right of preemption by the British government. This order was justified upon two grounds. Corn and flour.

1st. That it was made when there was a prospect of reducing the enemy to terms by famine, and that, in such a state of things, provisions bound to the enemy's ports became so far contraband as to justify Great Britain in seizing them upon condition of paying the invoice price, with a reasonable mercantile profit thereon, together with freight and demurrage.

2nd. That the order was justified by necessity, the British nation being at that time threatened with a scarcity of the articles directed to be seized (*r*).

The right thus asserted under these peculiar circumstances by Great Britain gave rise to a lengthened discussion with the United States; but no practical result followed. In the year 1799 we find the principles which had been asserted in 1793 expressly sanctioned by Lord Stowell in these terms. Discussions with the United States.

"The right of taking possession of provisions is no peculiar claim of this country; it belongs generally to belligerent nations; the ancient practice of Europe, or at least of several maritime states of Europe, was to confiscate them entirely. A century has now elapsed since this claim was asserted by some of them. A more mitigated practice has prevailed in later times of holding such cargoes subject only to a right of preemption; that is, to a right of purchase upon a reasonable compensation to the individual whose property is thus diverted. This claim on the part of the belligerent cannot go beyond cargoes avowedly bound to the enemy's ports, or suspected on just grounds to have a con- Opinion of Lord Stowell.

(*r*) Wheaton's Hist. of Modern Law of Nations, 380.

Rights of preemption.

cealed destination of that kind. The neutral can only expect a reasonable compensation. He cannot look to the price he would obtain in the enemy's port. An enemy distressed by famine may be driven by his necessities to pay a famine price; but it does not follow that the belligerent, in the exercise of his rights of war, is to pay the price of distress" (*s*).

Carrying enemy's troops.

Carrying the enemy's troops is universally held to be an illegal act, and subjects a neutral ship to confiscation. The number of troops so conveyed is immaterial; for it has been observed that the sending out of one veteran general to the scene of hostilities might be of more importance to the belligerent power than the conveyance of a whole regiment (*t*). And even although the neutral ship should be pressed into the enemy's service, this circumstance will not save her from condemnation (*u*).

Carrying enemy's despatches.

The carriage of the enemy's despatches involves a similar penalty. "It has been asked what are despatches?" says Lord Stowell, "to which I think this answer may be safely returned; that they are all official communications of official persons on the public affairs of the government. The comparative importance of the particular papers is immaterial, since the court will not construct a scale of relative importance, which it has not in fact the means of doing with any degree of accuracy or with satisfaction to itself; it is sufficient that they relate to the public business of the enemy, be it great or small. It is the right of the belligerent to intercept and cut off all communication between the enemy and his settlements, and to the utmost of his power to harass and disturb this connection, which it is one of the declared

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(*s*) *The Haabet*, 2 Rob. Adm. Rep. 182.
(*t*) *The Orozembo*, 1 Rob. Adm. Rep. 434.
(*u*) Id.

objects of the ambition of the enemy to preserve. It is not to be said, therefore, that this or that letter is of small moment; the true criterion will be, is it on the public business of the state, and passing between public persons for the public service? That is the question" (*v*).

Exception.

An exception to this rule has been made in favor of the despatches of a minister resident in a neutral state; on account of the peculiar favor with which Ambassadors are regarded by the law of nations (*w*).

Homeward voyage.

If a vessel carries contraband on the outward voyage, she is liable to condemnation on the homeward voyage. And it is not essential to this end that the return cargo should have been purchased with the proceeds of the contraband goods (*x*).

Penalties attaching to contraband.

The penalties attaching to contraband, as we have seen, vary in degree; but the following may be stated as the result of the decisions upon the subject.

1. If the owner of a contraband cargo is also owner of the ship, both cargo and ship are liable to condemnation. If he is owner of a share of the vessel only, his share will be condemned.

2. The penalty attaching to the conveyance of hostile troops or despatches, is the confiscation of the ship. And if the owners of the cargo are implicated, it will share the same fate (*y*).

3. The carriage of contraband with a false destination and false papers, subjects both ship and cargo to condemnation (*z*).

4. The ordinary penalty attaching to contraband, is the confiscation of the articles seized. But if the owner of the contraband goods is also owner of the remainder of the cargo, the whole will be

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(*v*) *The Caroline*, 6 Rob. Adm. Rep. 465.
(*w*) Id.
(*x*) Per Sir W. Grant, *The Margaret*, 1 Acton, 335.
(*y*) *The Atalanta*, 6 Rob. Adm. Rep. 460.
(*z*) *The Franklin*, 3 Rob. Adm. Rep. 224.

condemned. If he is owner of a portion only of the remainder, that portion will be condemned (*a*).

Penalties of contraband.

5. In certain cases naval stores and provisions are subjected only to the right of preemption by the captor at a reasonable price.

Section 4.

"*That it is lawful to naval powers when engaged in war to blockade the ports of their enemies by cruising squadrons, bonâ fide allotted to that service, and fairly competent to its execution. That such blockade is valid and legitimate, although there be no design to attack or to reduce by force the port, fort or arsenal to which it is applied. And that the fact of the blockade, coupled with due notice thereof to the neutral powers, shall affect not only vessels actually intercepted in the attempt to enter the blockaded port, but those ships also which shall elsewhere be met with, and shall be found to have been destined to such port, under the circumstances of the fact and notice of the blockade.*"

Right of blockade universally recognised.

The right of preventing a neutral from entering a blockaded port appears to have been recognised in all ages. "If," says Vattel, "I lay siege to a place, or even simply blockade it, I have a right to hinder any one from entering, and to treat as an enemy whoever attempts to enter the place, or carry anything to the besieged without my leave; for he opposes my undertaking, and may contribute to the miscarriage of it, and thus involve me in all the misfortunes of an unsuccessful war. King Demetrius hanged up the master and the pilot of a vessel conveying provisions to Athens at a time when he was on the point of reducing that city by famine. In the long and bloody war carried on by

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(*a*) *The Stuadt Embden*, 1 Rob. Rep. 26.

the United Provinces against Spain for the recovery of their liberties, they would not suffer the English to carry goods to Dunkirk, before which the Dutch fleet lay" (*b*).

Considerable doubt formerly existed as to what did or did not constitute a valid blockade. It has been sometimes contended that a simple declaration by a belligerent power to that effect, and duly notified to neutral powers, was sufficient for the purpose. But by the present law and practice of nations a blockade is only recognised when it exists in fact. "It is," says Lord Stowell, "an undoubted right of belligerents to impose such a blockade, though a severe right, and not to be extended by construction. It may operate as a grievance upon neutrals, but it is one to which by the law of nations they are bound to submit. Being, however, a right of a severe nature, it is not to be aggravated by mere construction. If the ships stationed on the spot to keep up the blockade will not use their force for the purpose, it is impossible for a court of justice to say there was a blockade actually existing at the time so as to bind the vessel" (*c*). Definition of blockade by Lord Stowell.

Martens lays it down as a belligerent right, "défendre tout commerce avec une place, forteresse, port ou camp ennemi qu'elle tient tellement bloqué ou assiegié qu'elle se voie en état d'en empêcher l'entrée" (*d*). A more recent authority defines a blockade to be, "Un lieu bloqué soit ce un port, une place forte, une ville, un camp, une côte, &c.; est celui où il y a par les dispositions de la puissance qui l'attaque avec des troupes ou des vaisseaux stationnés et suffisamment proches, danger évident à By Martens. By Kluber.

(*b*) 1 Vattel, b. 3, c. 8, s. 117.
(*c*) *The Juffrow Maria*, 3 Rob. Adm. Rep. 147.
(*d*) Precis du Droit des Gens Moderne, vol. 2. Edit. Par. 1831.

entrer sans le consentement de cette puissance" (*e*). This latter definition appears to be substantially the same as that laid down by the armed neutrality in 1780.

A blockade, properly so called, must then be real and effective. And in order to render it valid as regards neutrals three circumstances are essential. In the first place it must be imposed by a competent authority; in the second it must be effectively maintained; and lastly, its existence must be duly notified to neutral nations.

How imposed.

The imposition of a blockade is an act of sovereign authority, and the usual practice of the British government is to declare the fact by an Order in Council. This has long been the usage as regards blockades of any port in Europe. But a naval commander on a distant station, as, for example, on the coast of South America, may be presumed to carry with him such a portion of the supreme authority as will enable him to exercise this right (*f*).

Must be effectively maintained.

The declaration of the blockade must be followed by actual and complete investment. A declaration followed by partial investment only is not sufficient. Thus in the year 1794 the British commander in the West Indies declared the island of Guadaloupe to be in a state of blockade; but the Lords of Appeal held that the blockade was invalid, on the ground that the facts did not correspond with the declaration (*g*). The actual presence of a sufficient number of armed vessels seems to be essential to constitute a legal blockade, but its validity will not be affected should they be temporarily driven from their station by stress of weather (*h*). During the last war various blockades

(*e*) Droit des Gens Moderne, par Jean Louis Klüber. Paris, 1831, tom. 2, p. 93.
(*f*) *The Rolla*, 6 Rob. Adm. Rep. 367.
(*g*) *The Betsy*, 1 Rob. 93.
(*h*) See *The Camperdown*, 3 Rob. 147.

were declared and attempted to be maintained by simple proclamation on the part of the belligerent powers. But these proceedings are now universally held to have been an unjustifiable violation of the rights of neutral states (*i*).

Notification of blockade.

It is usual officially to notify the existence of a blockade to neutral states, but it has been held that this notice is not indispensable. Thus in a case where a vessel belonging to Bremen was captured on her outward voyage from Amsterdam, then in a state of blockade, and it was pleaded for the owner that the blockade existed *de facto* only, and that no notification of it had been made to the Hanse Towns, Lord Stowell condemned the ship, observing, "At Amsterdam it must have been a subject of general notoriety that the port was legally considered by the English in a state of blockade, and it is impossible that it should not have come to the knowledge of this Bremen man. It is not to be said by any person, 'although I know a blockade exists, yet because it has not been notified to my

(*i*) On the 11th November, 1807, a decree was issued at Milan by the French government in connection with one previously issued at Berlin, the 3rd article of which declared "the British islands to be in a state of blockade both by land and sea. Every ship of whatever nation, or whatsoever the nature of its cargo may be, that sails from the ports of England, of those of the English colonies, and of the countries occupied by English troops, is good and lawful prize, as contrary to the present decree; and may be captured by our ships of war or our privateers, and adjudged to the captor." *Annual Register*, vol. 49, p. 780. Various retaliatory orders in council were issued by the British government, one of which, dated the 21st November, 1807, declared not only France, "but all her tributary states to be in a state of blockade." It is obviously impossible to reconcile either of these sweeping proclamations with the recognised rules of the law of nations, applicable to blockade. An essential element was wanting in both cases, viz., a competent force to maintain the blockade, and for this all the navies in the world would not have sufficed.

court I will take out a cargo' " (*k*). From this case it appears that if the existence of the blockade is a matter of notoriety at the port whence the neutral vessel sails, proof of official notice will not be required.

Sailing with intent to break a blockade.

An intention to break a blockade also renders a neutral vessel liable to capture. But the intention must be clear and premeditated (*l*). The mere act of steering for a blockaded port is not sufficient, for that does not necessarily imply an intention to violate the blockade. A case decided not long since by the Court of Common Pleas establishes the latter point. In delivering judgment upon this case, which raised the question as to whether the act of sailing for the island of Terceira, when it was in a state of blockade, and of which due notice had been given to the English government, was in itself illegal, Chief Justice Tindal observed, " The case of *The Neptunus*, which was cited in support of the first objection, establishes that it is illegal to attempt to enter a blockaded port in violation of the blockade, and that after notification of the blockade the act of sailing to a blockaded port with the intention of violating the blockade, is in itself illegal. But neither that case nor any other that can be cited has laid it down that the mere act of sailing to a port which is blockaded at the time the voyage is commenced is any offence against the law of nations, where there is no premeditated intention of breaking the blockade if it shall be found to continue in force when the ship arrives at the port. Any such determination would be destructive, in many instances, of the fair commercial speculations of neutral merchants, to whom it might be of the first importance to possess the opportunity of introducing their goods into the port which had been blockaded at the very earliest moment after such

(*k*) *The Adelaide*, 2 Rob. Ad. Rep. 111.
(*l*) *The Neptunus*, 2 Rob. Ad. Rep. 110.

blockade had been relaxed. In the present case there was no evidence of any understanding between the contracting parties that the defendant was to break the blockade of Terceira in order to deliver his outward cargo. We see therefore no reason for holding the contract void on the ground of illegality" (*m*).

Sailing from a blockaded port.

The sailing from a blockaded port is equally a violation of the blockade as an entry of the port. "A blockade," said Lord Stowell (*n*), "is a sort of circumvallation round a place by which all foreign connection and correspondence is, as far as human force can effect it, to be entirely cut off. It is intended to suspend the entire commerce of that place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral vessel is, that having already taken on board a cargo before the blockade begins, she may be at liberty to retire with it. But it must be considered as a rule, which this court means to apply, that a neutral ship departing can only take away a cargo *bonâ fide purchased and delivered before the commencement of the blockade.* If she afterwards takes cargo on board it is a fraudulent act and a violation of the blockade."

Escape from a blockaded port.

And a neutral ship will not escape the penalties of breaking a blockade, although she may have succeeded in eluding the vigilance of the blockading vessel or squadron, and has proceeded some distance on her voyage, in which case she is still liable to be pursued and taken (*o*). But the penalty attaching to the breach of the blockade does not reach beyond the termination of the voyage. The penalty is also held to be remitted if the blockade has been raised before the capture of the ship (*p*).

(*m*) Abbott on Shipping, part 4, cap. 12.
(*n*) *The Vrow Judith*, 1 Rob. Ad. Rep. 151.
(*o*) *The Welvaart Van Pillau*, 2 Rob. Ad. Rep. 130.
(*p*) *The Lisette*, 6 Rob. 387.

What vessels may leave a blockaded port.

From the passage just cited from Lord Stowell, it appears that neutral vessels with cargoes laden *before* the commencement of the blockade are not prevented from leaving the port with such cargoes, and such, in fact, is the modern usage both in Europe and America (*q*). In accordance with this principle it has been held that goods sent to a port before it was blockaded, and returned to the consignor as unsaleable, were not liable to condemnation. The court in this case observed that the rule which allows neutrals to withdraw from a blockaded port, extended with equal justice to merchandise sent in before the blockade, and withdrawn *bonâ fide* by the neutral owner (*r*). On the same principle a ship transferred from one neutral to another, and sailing out of the blockaded port in ballast, has been held no violation of the blockade (*s*).

Excuses for breaking a blockade.

Excuses are sometimes set up for the violation of a blockade, but they are received with extreme caution by the court. The intoxication of the master of the ship; the state of the weather; the necessity of obtaining certain information; and the want of water or provisions have all at different times been urged in defence of this charge. It has been decided that the first of these pleas is wholly inadmissible (*t*), as otherwise there would be a direct encouragement to drunkenness. With respect to the next two it has been observed that the owner of the ship must shew that he was led to the port by some accident which he could not controul, or by some want of information which he could not obtain (*u*). As to the want of provisions or water, Lord Stowell has said that this excuse "to be admissible must shew an imperative and overruling compulsion to enter the particular port under block-

(*q*) Kent Com. part 1, Lect. 7.
(*r*) See Rob. 4, 89 note.
(*s*) *The Potsdam*, 4 Rob. Ad. Rep. 89.
(*t*) *The Shepherdess*, 5 Rob. 262.
(*u*) *The Arthur*, Edwards Rep. 203.

ade, which can scarcely be said in any case of mere want of provisions. It may induce the master to seek a neighbouring port; but it can hardly ever force a person to resort exclusively to the blockaded port" (*v*). In another case of a similar kind he said that "nothing but an absolute and unavoidable necessity will justify the attempt to enter a blockaded port" (*w*). When held valid.

The penalty attaching to the breach of a blockade is the confiscation of the ship, and the cargo is always *primâ facie* equally subject to condemnation. It lies on the owner of the latter to remove this presumption to the satisfaction of the court (*x*). Two modern jurists (*y*) state that parties violating a blockade, may, in addition to the confiscation of the ship and cargo, be subjected to personal punishment; but this practice seems to have now disappeared among European nations. Penalties for breaking a blockade.

The principles of law applicable to blockade as established in the English Admiralty Courts, have been fully recognised in the United States. Upon this point Mr. Chancellor Kent observes: "The judicial decisions in England and in this country have given great precision to the law of blockade, by the application of it to particular cases, and by the extent and clearness and equity of their illustrations. They are distinguished likewise for general coincidence and harmony in their principles. All the cases admit that the neutral must be chargeable with knowledge either actual or constructive of the existence of the blockade, and with an intent, and with some attempt to break it before he is to suffer the penalty of a violation of it. The evidence of that intent and of the overt act will greatly vary Same rules observed in America.

(*v*) *The Fortuna*, 5 Rob. 27.

(*w*) *The Hurtige Hane*, 2 Rob. 124.

(*x*) *The Mercurius*, 1 Rob. 67. *The Columbia*, 3 Rob. 173. *The Alexander*, 1 Edwards, 39.

(*y*) Martens Precis des droits des gens, tom. 2, p. 268. Klüber, tom. 1, p. 116.

according to circumstances; and the conclusions to be drawn from these circumstances will depend in some degree upon the character and judgment of the prize courts, but the true principles which ought to govern have rarely been matters of dispute" (*z*).

Section 5.

"*That the right of visiting and examining neutral vessels is a necessary consequence of these principles, and that by the law of nations (when unrestrained by treaty) this right is not in any manner affected by the presence of a neutral ship of war, having under its convoy merchant ships either of its own nation or of any other country.*"

Right of search indispensable.

The right of visitation and search, which of late years has given rise to so much controversy, is a necessary consequence of the preceding rules. It is obvious that those laid down respecting an enemy's property in a neutral ship, as also those relating to contraband, would be wholly inoperative unless some recognised means existed for ascertaining the precise nature of the cargo. The privilege of making such necessary inquiry devolves by universal usage upon the vessels of war belonging to the belligerent powers. They are entitled for this purpose to stop a neutral ship on the high seas, to inspect her papers and even her cargo, and in case of refusal or resistance, to capture her as lawful prize of war (*a*).

The exercise of this indispensable right has led to frequent disputes between modern states; and various attempts have been made, although without success, to defeat it. Of these, the case of the Swedish convoy, which was determined towards the

(*z*) Kent Com., part 1, Lect. 7.

(*a*) Wheaton's History of the Modern Law of Nations, p. 145.

close of the last century, is the most remarkable, inasmuch as it led ultimately to the rupture between Great Britain and the northern powers in 1801. The circumstances were shortly these:—

Case of the Swedish convoy.

A fleet of Swedish merchantmen proceeding under convoy of a Swedish ship of war to certain Mediterranean ports at that time in possession of France, was captured in January, 1798, by a British squadron, on the ground of its refusal to submit to the right of search. The case was brought before the Court of Admiralty for adjudication, and the question simply was whether the presence of the convoy under such circumstances rendered the capture illegal. The court decided that it did not; and that the Swedish vessels were accordingly lawful prize of war.

In pronouncing judgment in this celebrated case (11th June, 1799) Lord Stowell laid down certain rules of international law with respect to the right of search, which coming as they do from such an authority, are worthy of all attention. These rules were three in number.

Rules laid down by Lord Stowell.

First rule.

The first of these, according to his Lordship, entitled the lawfully commissioned cruisers of belligerent states, to visit and search a merchant vessel on the high seas, whatever may be the vessel, the cargo or the destination; because until it is visited and searched the true character of the ship, the nature of the cargo, and the object of the voyage cannot be ascertained. "This right," said his Lordship, "is so clear in principle, that no man can deny it who admits the rights of maritime capture; because if you are not at liberty to ascertain by sufficient inquiry whether there is property that can legally be captured, it is impossible to capture. Even those who contend for the inadmissible rule that free ships make free goods, must admit the exercise of this right, at least for the purpose of ascertaining whether the ships are free ships or not. The right is equally clear in practice; for practice is uniform and universal upon the sub-

Case of the Swedish convoy.

ject. The many European treaties which refer to this right, refer to it as preexisting, and merely regulate the exercise of it. All writers upon the law of nations unanimously acknowledge it, without the exception even of Hubner (*b*) himself, the great champion of neutral privileges."

Second rule.

The second rule laid down by his Lordship applied to the case then before him. In it a new principle had been attempted to be introduced, which, if generally recognised, would in effect have established the rule of free ships, free goods, for which the Northern powers had unsuccessfully contended in 1780. If, as was now alleged, the right of search was defeated by the presence of a ship of war, it necessarily followed that the largest fleet of neutrals, laden not only with enemy's property, but with contraband of war, was entirely secure from interruption so long as it was accompanied by an armed cruiser, even of the most insignificant dimensions. But the court decided that the protection thus intended to be afforded was of no avail against the rights of a belligerent power. "Two sovereigns," it was observed, "may unquestionably agree, if they think fit, as in some late instances they have agreed by special covenant that the presence of one of their armed ships along with their merchant ships shall be mutually understood to imply that nothing is to be found in that convoy of merchant ships inconsistent with amity or neutrality; and if they consent to accept this pledge, no third party has a right to quarrel with it, any more than with any other pledge which they may agree mutually to accept. But surely no sovereign can legally compel the acceptance of such a security by mere force. The only security known to the law of nations upon this subject, independently of all special covenants, is the right of personal

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(*b*) "De la saisie des batimens neutres," par M. Hubner, a la Haye, 1759.

visitation and search, to be exercised by those who have the interest in making it." Case of the Swedish convoy.

The third rule prescribes the penalty which attaches to a ship resisting the right of search when demanded by a lawfully commissioned belligerent cruiser. The penalty under such circumstances, in case of capture, is the confiscation of the property so withheld from search. "For the proof of this," Lord Stowell observed, "I need only refer to Vattel, one of the most correct, and certainly not the least indulgent, of modern professors of public law." In Book 3, c. 7, sec. 114, he expresses himself thus:—"On ne peut empêcher le transport des effects de contrebande si l'on ne visite pas les vaisseaux neutres. On est donc en droit de les visiter. Quelques nations puissantes ont refusé en différents temps de se soumettre à cette visite; aujourd'hui un vaisseau neutre, qui réfuseroit de souffrir la visite, se feroit condamner par cela seul, comme étant de bonne prise." Vattel is here to be considered, not as a lawyer merely delivering an opinion, but as a witness asserting a fact—the fact that such is the existing practice of modern Europe. Conformably to this principle, we find in the celebrated French ordinance of 1681, now in force, article 12, 'that every vessel shall be good prize in case of resistance and combat;' and Valin, in his smaller commentary, p. 81, says expressly, 'that although the expression is in the conjunction, yet that the resistance alone is sufficient.'" He refers to the Spanish ordinance, 1718, evidently copied from it, in which it is expressed in the disjunctive, in case of resistance *or* combat. And recent instances are at hand and within view, in which it appears that Spain continues to act upon this principle. The first time it occurs to my notice, on the inquiries I have been able to make in the institutes of our own country, respecting matters of this nature, except what occurs in the Black Book of the Admiralty, is in the Order of Council, 1664, art. 12, which directs "That when Third rule.

Case of the Swedish convoy.

any ship, met withal by the royal navy or other ship commissioned, shall fight or make resistance, the said ship and goods shall be adjudged lawful prize." A similar article occurs in the proclamation of 1672. I am, therefore, warranted in saying that it was the rule, and the undisputed rule, of the British Admiralty. I will not say that that rule may not have been broken in upon, in some instances, by considerations of comity or of policy, by which it may be fit that the administration of this species of law should be tempered in the hands of those tribunals which have a right to entertain and apply them; for no man can deny that a state may recede from its extreme rights, and that its supreme councils are authorized to determine in what cases it may be fit to do so, the particular captor having in no case any other right and title than what the state itself would possess under the same facts of capture. But I stand with confidence upon all principles of reason—upon the distinct authority of Vattel—upon the institutes of other great maritime countries, as well as those of our own country, when I venture to lay it down that by the law of nations, as now understood a deliberate and continued resistance to search, on the part of a neutral vessel to a lawful cruiser, is followed by the legal consequences of confiscation" (*c*).

Proofs of neutral character.

The presence of a vessel of war will not, therefore, protect a neutral from search by a belligerent cruiser. Under such circumstances, and under all circumstances, the neutral is bound not only to submit to search, but to be duly furnished with the necessary proofs of her neutral character. These are generally the register, passport, sea-letter, muster-roll, log-book, charter party, invoice, and bill of lading (*d*). The want of such documents, however, will not be held conclusive without other proof of the hostile character of the ship. Even

(*c*) *The Maria*, 1 Robinson, 340.
(*d*) Kent Com. part 1, Lect. 7.

the wilful destruction of the ship's papers will not be held sufficient. Lord Mansfield has expressly stated that he never knew a case of a vessel being condemned upon that ground alone (*d*).

Rules recognised in America.

With respect to the law and practice of the United States, Mr. Chancellor Kent states that "The doctrine of the English Admiralty on the right of visitation and search, and on the limitation of the right, has been recognised in its fullest extent by the courts of justice in this country" (*e*). And Mr. Justice Story, referring to the judgment of Lord Stowell in the case of *The Maria*, has stated, that the principles there laid down "can never be shaken without delivering to endless controversy and conflict the maritime rights of the world" (*f*).

Sections 6 & 7.

"*Commissioning privateers, and impressing British seamen out of neutral merchant ships.*"

Letters of marque how granted.

With regard to these two belligerent rights little requires to be said. The right of commissioning privateers in time of war is an ancient prerogative of the crown, and it is one which has hitherto been universally recognised by the law of nations (*g*). Letters of marque and reprisal were formerly, in practice, granted upon due application being made to the Lord Chancellor (*h*). But latterly it has been usual to empower the authorities of the Admiralty to exercise this right (*i*).

(*d*) *Bernardi* v. *Motteaux*, Doug. 581.
(*e*) Kent Com. part 1, sec. 7.
(*f*) *The Nereide*, 9 Cranch. 439.
(*g*) Grotius de Jure B. et P., l. 3, c. 2, § 4 & 5.
(*h*) 4 Henry 5, c. 7.
(*i*) 29 Geo. 2, c. 34; 19 Geo. 3, c. 67. This practice has been strongly condemned by many eminent statesmen, both in Europe and America, as tending to

Impressment of British subjects out of neutral ships.

The right of impressing her own subjects out of neutral merchant ships in time of war is also one which has been invariably asserted by England. This right, the exercise of which has given rise to much controversy with foreign countries, and especially with the United States, is a necessary result of the English doctrine of allegiance. According to this doctrine, the subject cannot by any act of his own dissolve the inherent obligation under which he may at any time be called upon to render military service to the crown. Hence employment in foreign service, or even the fullest admission to the rights of citizenship and naturalization in a foreign state, have no effect in annulling the primary and indefeasible bond of allegiance which exists between him and his sovereign (*k*).

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encourage crime, and to aggravate unnecessarily the miseries of war. Benjamin Franklin even argues that it must be attended with positive loss to the country which sanctions it. In his correspondence with the British commissioner, in 1783, he states that "The practice of robbing merchants in the high seas, a remnant of ancient piracy, though it may be accidentally beneficial to particular persons, is far from being profitable to all engaged in it, or to the nation that authorizes it. In the beginning of a war some rich ships, not upon their guard, are surprised and taken. This encourages the first adventurers to fit out more armed vessels, and many others to do the same. But the enemy, at the same time, become more careful, arm their merchant ships better, render them not so easy to be taken; they go, also, more under the protection of convoys; thus while the privateers to take them are multiplied, the vessels subject to be taken and the chances of profit are diminished, so that many cruises are made wherein the expenses overgo the gains; and, as is the case in other lotteries, though some have good prizes, the mass of adventurers are losers, the whole expense of fitting out all the privateers, during a war, being much greater than the whole amount of goods taken." Wheaton's Hist. of Law of Nations, 309.

(*k*) Previous to the signature of the treaty of Washington, in 1842, this right underwent much discussion,

but without any satisfactory result. The government of the United States, however, protested seriously against its exercise at any future time. A despatch addressed by Mr. Webster to the British Plenipotentiary, on the 8th of August, 1842, after reviewing in detail the nature of the right, and the results to which it had led, contains the following passage :—

"The government of the United States has used the occasion of your Lordships' pacific mission to review the whole subject, and to bring it to your notice and to that of your government. It has reflected on the past, pondered on the condition of the present, and endeavoured to anticipate, so far as might be in its power, the probable future; and I am now to communicate to your Lordships the result of these deliberations.

"The American government, then, is prepared to say that the practice of impressing seamen from American vessels cannot hereafter be allowed to take place. That practice is founded on principles which it does not recognise, and is invariably attended by consequences so unjust, so injurious, and of such formidable magnitude as cannot be submitted to." Wheaton's Law of Nations, p. 745.

In the course of his reply to this communication, Lord Ashburton, after stating that it should be without delay laid before his government, made the following remarks :—"The very anomalous condition of the two countries with relation to each other here creates a difficulty. Our people are not distinguishable; and owing to the peculiar habits of sailors, our vessels are very generally manned from a common stock. It is difficult, under these circumstances, to execute laws, which at times have been thought to be essential for the existence of the country, without risk of injury to others. The extent and importance of those injuries, however, are so formidable that it is admitted that some remedy should, if possible, be applied; at all events, it must be fairly and honestly attempted. It is true that during the continuance of peace no practical grievance can arise; but it is also true that it is for that reason, the proper reason for the calm and deliberate consideration of an important subject. I have much reason to hope that a satisfactory arrangement respecting it may be made, so as to set at rest all apprehension and anxiety, &c." Ibid, p. 748.

CHAPTER II.

SECTION I.

RECENT ROYAL DECLARATIONS AND ORDERS IN COUNCIL.

On the 28th of March, 1854, war was declared against the Emperor of Russia; and the *London Gazette* of that date contains, in addition, the following declaration:—

Declaration of 28th March.

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the powers with whom she remains at peace.

"To preserve the commerce of neutrals from all unnecessary obstruction, her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the law of nations.

"It is impossible for her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches; and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

"But her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel, unless it be contraband of war.

"It is not her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships; and her Majesty further declares that, being anxious to lessen, as much as possible, the evils of war, and to restrict its operations to the regularly organized forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers.

"*Westminster, March* 28, 1854."

It will be seen that several important concessions have been made in this declaration, the effects of which it is necessary now to consider.

And, first, we may observe that we are bound to assume that these concessions have been made with the full knowledge and consent of her Majesty's allies in the present war. It is a clearly established rule of international law, that during a conjoint war no belligerent right can be renounced or suspended by one power, without the sanction of its allies. "At the same time," observes Lord Stowell, "it has happened, since the world has grown more commercial, that a practice has crept in of admitting particular relaxations, and if one state only is at war no injury is committed to any other state. It is of no importance to other nations how much a single belligerent chooses to weaken and dilute his own rights; but it is otherwise when allied nations are pursuing a common cause against a common enemy. Between them it must be taken as an implied, if not an express, contract, that one state shall not do anything to defeat the general object. If one state admits its subjects to carry on an uninterrupted trade with the enemy, the consequence may be that it will supply that aid and comfort to the enemy, especially if it be an enemy depending, like Holland, very materially on the resources of foreign commerce, which may be very injurious to the prosecution of the common cause, and to the interests of its

Consent of allies when necessary.

ally" (*a*). Upon the rule, thus clearly stated and explained, it is superfluous to dwell.

Concessions.

Next, as to the particular concessions made, it is obvious that that which waives the right of seizing enemy's property laden on board a neutral vessel is the most important. England has never before conceded this right, except by special treaty. She maintained it successfully against the pretensions of the Dutch in the seventeenth century, and on two subsequent occasions against a combination of the most powerful European states. From the reign of Edward the First (*b*), if not before, this right has been uniformly and consistently preserved. It has been recognised, moreover, to its full extent, as we have seen, by the United States, although, perhaps, no country on the globe is more strongly interested in the protection and security of neutral commerce. The concession now voluntarily made on the part of England is, therefore, an incident of the highest interest in the history of maritime law, and it may probably lead to very important results. At the same time we must bear in mind that the right in question is only waived, and not abandoned or renounced: and without presuming to explain the motives of her Majesty's advisers, we may remark that its exercise in the present war may have been deemed incompatible with the interests of our allies, and with the treaties by which they are bound with foreign powers. France (*c*), it is well

First recognition of "free ships free goods."

(*a*) *The Neptune*, 6 Rob. 405. A declaration in identical terms with that of the 28th March appeared in the *Moniteur* of the same date on the part of the French government. The assent of the Sultan to these concessions, though it does not seem to have been publicly announced, is implied, in accordance with the principles here laid down.

(*b*) See Lord Liverpool's Discourse on Neutral Nations, p. 19.

(*c*) See upon this point Martens Recueil des Traités.

known, has entered into numerous treaties with different states, by which she engages to respect their flag in time of war; and the inconvenience and confusion would have been great had we, as her ally, continued to exercise our right without regard to such engagements. It by no means follows, therefore, that this right may not be re-asserted at some future time, and under a different state of circumstances from the present. Were Britain, as she has been in times past, assailed by formidable enemies and left without an ally, a revival of the ancient rule might probably be considered both politic and just.

Contraband.

But although we now recognise for the first time the right of a neutral flag to protect an enemy's property, the rule with regard to contraband of war remains unaltered. No attempt has been made to limit or define the term anew, so that we must still look to the decisions of the Admiralty Courts for the solution of all questions relating to this extensive and difficult subject. There is no branch of maritime law that has given rise to more discussion, and for this obvious reason, that different nations have arrived at very different conclusions respecting the nature and signification of contraband. We have a remarkable instance of these conflicting views in the case of naval stores. We learn from the most eminent English civilian of the seventeenth century (*c*), that they were not held to be contraband in his time; but they have been since so considered, generally speaking, in Spain, France and England. On the other hand it was one of the principal objects of the armed neutrality to exclude naval stores from the catalogue of contraband; and the Baltic powers appear still to adhere to the principles which they proclaimed upon this subject in 1780. Since the commence-

Naval stores.

(*c*) Sir L. Jenkins, *ante*, p. 16.

Declarations of Sweden and Hamburg.

ment of the present war, Sweden (*d*) has published a list of contraband which includes only military stores; and the senate of Hamburg has issued a declaration to the same effect (*e*).

Is coal contraband?

It is highly probable, therefore, that questions relating to naval stores will continue to be involved in considerable difficulty and doubt, and to depend in a great measure for their solution, upon the circumstances of each particular case. New questions may also arise upon this subject in the present war which have not yet been decided, or even discussed. To take an obvious example, it may be asked whether coals are to be held contraband? That they are naval stores of the most valuable description in modern warfare it is impossible to doubt. The large proportion of vessels propelled by steam in the fleets, both of Great Britain and her allies, renders a sufficient supply of this article so essential to their movements, that upon it might entirely depend the success of the most important enterprise. The naval forces of Russia may not be dependent to so great an extent upon this commodity, as it is generally believed that they contain a smaller proportion of steam vessels; but the principle in both cases is obviously the same, and we cannot but bear in mind that during the last war various articles of less immediate utility and importance were uniformly condemned. Sailcloth, masts, spars, anchors and other articles necessary

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(*d*) The list published by Sweden is as follows:—"Cannons, mortars, arms of all sorts, bombs, grenades, balls, flints, matches, gunpowder, saltpetre, brimstone, cuirasses, pikes, belts, cartouche boxes, saddles and bridles, as well as all articles serving *directly* for warlike purposes, excepting always such a quantity of those articles as may be necessary for the defence of the ship and the crew." *London Gazette* of 5th May, 1854. See Appendix.

(*e*) On the 11th of April last.

for the equipment of a ship seem to have been invariably held as contraband; but not one of these can in the naval warfare of the present day, bear comparison in point of value with the indispensable commodity in question, provided it is destined for the use of fleets engaged in active operations.

On the 9th of May last a question was put in the House of Commons (*f*) with the view of ascertaining whether by the recent Orders in Council, coals were prohibited from being conveyed by the vessels of neutral powers into any port or place in the dominions of Russia, not being in a state of blockade.

To this question the First Lord of the Admiralty (Sir J. Graham) is reported to have replied as follows: "The question was one of very great importance, and at the same time, of very great difficulty. Coal was not included in the terms of the Orders in Council, but instructions had been given to her Majesty's cruisers that coal should be treated as an article of *doubtful* character, and should therefore be subject to the law of nations, as it had been declared in the last war. He might illustrate the case of coal by that of hay, which was also an article of doubtful character, and might be intended either for commercial purposes, in which case it would not be liable to capture, or for purposes of war, in which case it would be held to be contraband of war. The orders which had therefore been given to her Majesty's officers were that they should exercise a sound discretion with reference both to the ports of destination and to the reasonable presumption they might entertain as to the use to which the commodity was to be applied, and if from the port of its destination, and the use to which they had reason to believe it was to be applied, they thought it should be treated

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(*f*) By Captain Scobell.

as an article of commerce, it was not to be captured; but if, on the contrary, they came to an opposite presumption, it was to be captured, and dealt with by the Court of Admiralty according to the established Law of Nations" (*g*).

Coals contraband according to circumstances.

From this statement it would appear that coal is to be considered in the same category with various other unmanufactured articles which are not contraband *per se*, but may become so under certain circumstances. Allusion has already been made to these, and we took occasion at the same time to remark, that in these doubtful cases the port of destination is a material fact to be ascertained. If bound for any fortified port or arsenal in possession of the enemy, we cannot doubt, from the statement of the First Lord of the Admiralty, that a cargo of coals would be condemned. And the mere fact of their being consigned to an ordinary commercial port will not be held conclusive in their favor, provided there are circumstances to shew that they are probably intended to be applied to warlike uses. What circumstances may be held sufficient to protect the cargo it would be presumptuous as yet to say; but we may observe that the good faith of the parties is an important element for consideration in cases of this doubtful nature, as indeed it is in all questions of maritime law, and proof of this cannot fail to exercise at all times its due influence on the decisions of the court.

Exportation of warlike stores.

While upon this subject we may refer to the restrictions which in consequence of the present war have been placed upon the exportation of certain articles from the United Kingdom. By an Order in Council dated the 24th of April 1854, the officers of her Majesty's customs are directed to prevent the export to any place in Europe north of Dunkirk, and to any place in the Mediterranean sea east of Malta, of the following articles; viz.

(*g*) See the *Times* of 10th May, 1854.

"gunpowder, saltpetre, brimstone; arms and ammunition; marine engines and boilers and the component parts thereof." From this Order a question naturally arises, and that is whether the last mentioned articles, if laden on board a neutral ship and consigned to a Russian port, should be held contraband. We should be strongly disposed to reply in the affirmative. If articles of a much simpler construction, but immediately adapted for the equipment of ships, such as masts and anchors, are unquestionably contraband, it is difficult to see why marine engines and boilers, which are so infinitely more important in modern warfare, and which, moreover, are only constructed in particular localities, and are therefore the more valuable upon that account, should be considered free. It could hardly even be contended that they should be placed in the category of *doubtful* articles; for their construction would speak for itself, and no question could thus arise as to the purpose for which they were intended to be applied. Order in Council of 24th April.

With regard to blockade, the universally recognised principles of law applicable to the subject are laid down in the declaration of the 28th of March. Her Majesty therein reserves the right of preventing "neutrals from breaking any *effective* blockade which may be established, with an *adequate* force against the enemy's forts, harbours, or coasts." The blockade, therefore, must have a *bonâ fide* existence to render it valid as regards neutrals; but it may be applied as well to the enemy's coasts as to his harbours. Upon this latter point it has been observed—"Not only a single port, but a number of ports, and even a great extent of coast, may be blockaded. In the month of March, 1799, the British government notified to all neutral powers the ports of Holland were all invested and blockaded by the British forces; and that every vessel, of whatever flag, every cargo, and every bottom attempting to enter them would become forfeited by the law of nations, as attempting to Blockade. Blockading enemy's coasts.

carry succour to the besieged. It must be admitted that in no former war had the blockading system been pushed to this extent; but this had been not for want of right, but for want of power. If a single port may be blockaded by a single squadron, which has never yet been disputed, a number of squadrons may blockade a certain extent of coast; and if a country possesses the power and means, and will incur the expense and hazard of covering the whole extent of an enemy's coast, it becomes entitled, upon the same principle, to the same exemption from neutral interference as if, with a single division, it invested a single fortress" (*h*).

Swedish definition of blockade.

In her recent declaration Sweden adheres to the definition of a blockaded port proclaimed by the armed neutrality in 1780, viz., that it should be invested in such a manner that there is evident danger in attempting to enter it (*i*).

There is still another passage in the declaration of the 28th of March which requires some consideration. It is stated, that "it is not her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships." This principle has been long recognised both in England (*k*) and in America, and it is one of obvious justice and utility. But although the Admiralty Courts of both countries acknowledge the rule, they have differed, upon one important point, with regard to its application. While admitting the general doctrine that the property of neutrals taken on board an enemy's ship is to be restored, an exception has been established in England in the case of such property being laden on board an armed belligerent

Neutral goods in an armed enemy's ship.

(*h*) Marshall on Insurance, b. 1, c. 3, s. 3. 1 Acton, 63.

(*i*) See Appendix.

(*k*) See *ante*, p. 14, and also note to p. 4, containing the propositions laid down by the commissioners on the case of the Silesian Loan.

vessel. In this instance the neutral will be presumed to have abandoned his neutrality for the time, and to have taken advantage of the enemy's vessel for the purpose of resisting visitation and search. His property being thus embarked on board an armed hostile ship will assume the character of the vehicle in which it is conveyed, and in case of capture it will share the same fate. The neutral cannot be allowed the double advantage of trading under the armed protection of an enemy, and, upon that failing him, of then setting up his claim of neutrality. He must make his election, and abide by the result.

English rule.

Lord Stowell, in a case in which neutral property had been laden on board a privateer, subsequently captured on the voyage, expressed himself to the following effect:—

"The ship being furnished with a letter of marque is manifestly a ship of war, and is not otherwise to be considered, because she also acted in a commercial capacity. The mercantile character being superadded does not predominate over or take away the other. There was formerly, indeed, a distinction made between privateers and merchant vessels furnished with a letter of marque; the one being entitled to head money and the other not; but that distinction has been entirely done away. A neutral subject is at liberty to put his goods on board a merchant vessel, though belonging to a belligerent, subject nevertheless, to the right of the enemy who may capture the vessel; but who has no right, according to the modern practice of civilized states, to condemn the neutral property. Neither will the goods of the neutral be subject to condemnation, although a rescue should be attempted by the crew of the captured vessel, for that is an event which the merchant could not have foreseen. But if he puts his goods on board a ship of force, which he has every reason to presume will be defended against the enemy by that force, the case then becomes very different. *He betrays an*

intention to resist visitation and search, which he could not do by putting them on board a mere merchant vessel, and as far as he does this he adheres to the belligerents; he withdraws himself from his protection of neutrality, and resorts to another mode of defence; and I take it to be quite clear, that if a party acts in association with a hostile force, and relies upon that force for protection, he is, *pro hac vice*, to be considered as an enemy" (*l*).

Opposite rule in America.

In the year 1815 the same question arose in the supreme court of the United States, and after the fullest discussion, a majority of the Judges arrived at an opposite conclusion from that of the English Admiralty Courts, and held that neutral property laden on board an armed belligerent ship, did not, upon that account, lose its neutral character, and was therefore not subject to confiscation.

The circumstances of the case were these: during the war between Great Britain and the United States in 1813, a native of Buenos Ayres chartered an uncommissioned armed ship, the property of British subjects, for a voyage from London to Buenos Ayres and back. The ship, which carried ten guns, was laden with a mixed cargo belonging partly to the charterer, and partly to British merchants. She sailed under convoy; but having been accidentally separated from it during the voyage, she was attacked and captured by an American privateer after a vigorous resistance. The charterer was on board at the time of capture, although it did not appear that he took any part in the engagement; and the question arose whether, under these circumstances, he had forfeited his neutral character, and, consequently, his share of the cargo.

Opinions of the American judges.

Mr. Chief Justice Marshall, in delivering judgment upon this case, took occasion to observe: "A belligerent has a perfect right to arm in his own

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(*l*) *The Fanny*, 1 Dodson, 448.

defence; and a neutral has a perfect right to transport his goods in a belligerent vessel. These rights do not interfere with each other. The neutral has no controul over the belligerent right to arm—ought he to be accountable for the exercise of it?

Opinions of the American judges.

"By placing neutral property in a belligerent ship, that property, according to the positive rules of law, does not cease to be neutral. Why should it be changed by a belligerent right, universally acknowledged and in common use when the rule was laid down, and over which the neutral had no controul?" and further, "To the argument that by placing his goods in the vessel of an armed enemy, he connects himself with that enemy and assumes the hostile character: it is answered that no such connexion exists. The object of the neutral is the transportation of his goods. His connexion with the vessel which transports them is the same, whether that vessel be armed or unarmed. The act of arming is not his—it is the act of a party who has a right so to do. He meddles not with the armament nor with the war. Whether his goods were on board or not the vessel would be armed and would sail. His goods do not contribute to the armament further than the freight he pays, and freight he would pay were the vessel unarmed."

Mr. Justice Johnson, who agreed with these views, observed: "The question is, why may not a neutral transport his goods on board an armed belligerent. No writer on the law of nations has suggested this restriction on his rights: and it can only be sustained on the ground of its obstructing the exercise of some belligerent right. What belligerent right does it interfere with? Not with the right of search, for that has relation to the converse case; it is a right resulting from the right of capturing enemy's goods in a neutral bottom. It must be then the right, which every nation asserts, of being the sole arbiter of its own con-

duct towards other nations, and deciding for itself, whether property, claimed as neutral, be owned as claimed. The question is thus fairly stated between the neutral and the belligerent. On the one hand the neutral claims the right of transporting his goods in the hostile bottom: on the other, the belligerent objects to his doing it under such circumstances as to impair his right of judging, between himself and the neutral, on the neutrality of his property and conduct. The evidence of authority, the practice of the world and the reason and nature of things must decide between them. All these are, in my opinion, in favor of the neutral claim. Every writer on international law acknowledges the right of the neutral to transport his goods in a hostile bottom. No writer has restricted the exercise of that right to unarmed ships. Every civilised nation (with the exception of Spain) has unequivocally acknowledged the existence of this right, unless it be relinquished by express stipulation; and even with regard to Spain, the evidence is wholly unsatisfactory to prove that she maintains a different doctrine. My present belief is that she does not; but admit that she does; and surely the practice of one nation, and that not the most enlightened or commercial, ought not to be permitted to controul the law of the world. And what is the decision of reason on the merits of these conflicting pretensions? Her first and favourite answer would be, that were the scales equally suspended between the parties, the decision ought to be given in favor of humanity."

Opinion of Mr. Justice Story.

The late Mr. Justice Story, at that time a member of the Supreme Court of the United States, dissented from these views; and it is well worthy of remark that the conclusions at which that eminent jurist arrived upon the subject are identical with those of Lord Stowell. He justified his dissent from the majority of his colleagues, among other, upon the following grounds:—

"On the whole my judgment is, that the act of

sailing under belligerent or neutral convoy is of itself a violation of neutrality, and the ship and cargo, if caught *in delicto*, are justly confiscable: and farther that if resistance be necessary, *as in my opinion it is not*, to perfect the offence, still that the resistance of the convoy is to all purposes the resistance of the associated fleet. It might with as much propriety be maintained that neutral goods, guarded by a hostile army in their passage through a country, or voluntarily lodged in a hostile fortress, for the avowed purpose of evading the municipal rights and regulations of that country, should not in case of capture be lawful plunder (a pretension never yet asserted) as that neutral property on the ocean should enjoy *the double protection of peace and war*."

Opinion of Mr. Justice Story.

Mr. Justice Story next proceeded to shew that if the right claimed was generally recognised, the right of search, so essential to nations engaged in war, might be entirely defeated.

"What," he asked, "would be the consequences if neutrals might lawfully carry on all their commerce in the frigates and ships of war of a belligerent sovereign? That there would be a perfect identity of interests and of objects, of assistance and of immunity, between the parties. The most gross frauds and enterprises would be carried on under neutral disguises, and the right of search would become as utterly insignificant in practice as if it were extinguished by the common consent of nations. The extravagant premiums and freights which neutrals could well afford to pay for this extraordinary protection, would enable the belligerent to keep up armaments of incalculable size, to the dismay and ruin of inferior maritime powers. Such false and hollow neutrality would be infinitely more injurious than the most active warfare. It would strip from the conqueror all the fruits of victory, and lay them at the feet of those whose singular merit would consist in evading his rights, if not in collusively aiding his enemy. It is not

Opinion of Mr. Justice Story.

therefore to be admitted that a neutral may lawfully place his goods under avowed protection, on board of an enemy ship. Nor can it be at all material whether such armed ship be commissioned or not: that is an affair exclusively between a sovereign and his own subjects, but is utterly unimportant to the neutral. For whether the armament be employed for offence, or for defence, in respect to third parties, the peril and the obstruction to the rights of search are equally complete." And further, "I am unable to perceive any solid foundation on which to rest a distinction between the resistance of a neutral and of an enemy master. The injury to the belligerent is in both cases equally great, for it equally withdraws the neutral property from the right of search, unless acquired by superior force. And until it is established that an enemy protection legally suspends the right of search, it cannot be that resistance to such right should not be equally penal in each party. I have therefore no difficulty in holding that the resistance of the ship is in all cases the resistance of the cargo, and that it makes no difference whether she be armed or unarmed, commissioned or uncommissioned. He who puts his property on the issue of battle, must stand or fall by the event of the contest."

In conclusion the learned Judge observed:

"I cannot bring my mind to believe that a neutral can charter an armed enemy ship, and victual and man her with an enemy crew (for though furnished directly by the owner they are in effect paid and supported by the charterer) with the avowed knowledge and necessary intent that she should resist every enemy; that he can take on board hostile shipments on freight, commissions and profits; that he can stipulate expressly for the benefit and use of the enemy convoy, and navigate during the voyage under its guns and protection; that he can be the entire projector and conductor of the voyage, and cooperate in all the plans of the owner

to render resistance to search secure and effectual; and that yet, notwithstanding all this conduct, by the law of nations he may shelter his property from confiscation and claim the privileges of an inoffensive neutral. On the contrary it seems to me that such conduct is utterly irreconcileable with the good faith of a friend, and unites all the qualities of the most odious hostility. It wears the habiliments of neutrality only when the sword and the armour of an enemy become useless for defence" (*m*).

Importance of the different rules in England and America.

The same question subsequently arose in the year 1818 before the same tribunal, and the previous decision was fully confirmed (*n*); so that upon this point there is a direct conflict of practice between the Admiralty Courts of Britain and those of the United States. I have thought it right to point out this distinction at some length in the first place, because there is a remarkable uniformity in the doctrines of maritime law as administered in the two countries, and secondly because, the difference in question, as Mr. Chancellor Kent (*o*) has truly said, is one "of infinite importance in its practical results." It is to be observed that as this rule was not established in the United States until after the close of the last war, we have had no means of ascertaining as yet what these results may be. But Mr. Justice Story has pointed out that the general recognition of such a doctrine must lead to an organised resistance to the right of search, and, consequently, to an unlimited amount of trading in contraband. Enlightened public opinion in the present day is opposed, as well in Europe as in America, to the practice of privateering, and to private warfare in every shape. This feeling has been justly expressed by the British

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(*m*) *The Nereide*, 9 Cranch, 454.
(*n*) *The Atalanta*, 3 Wheaton, 409.
(*o*) Commentaries, Part 1, Lecture 6.

and French governments, when they declare their present intention to "restrict their warlike operations to the regularly organised forces" of the two countries. But the direct tendency of the American doctrine would be to convert every merchant vessel into a private ship of war, and to revive that lawless spirit of adventure which characterises the early history of all commercial states. It cannot but be a matter of regret, therefore, that upon a point of such vast interest the tribunals of England and America should have arrived at opposite conclusions; and the more so that the evil is without a remedy. No international court of appeal exists for the adjustment of such differences; and the question of prize or no prize must continue to be left to the tribunals of the capturing power.

On the 6th of April (old style) the Emperor of Russia issued a declaration in reply to those of the British and French governments; and the following passage defines the commercial rights of subjects belonging both to the belligerent and the neutral powers:—

British and French property in neutral ships.

"The property of British and French subjects on board neutral vessels will be regarded as inviolable by our cruisers. English and French goods, even should they belong to subjects of Great Britain or France, will be allowed to be imported under neutral flags into our ports, in accordance with the usual Custom-house tariff regulations, without any hindrance upon our parts. Moreover the property of neutrals, found on board of the enemy's vessels, will not be subject to confiscation. But it is self-evident that a neutral flag will not cover such cargoes or articles as by international law are considered articles of contraband; in consequence of which, the vessels, on which such contraband may be found, will be stopped by our cruisers, and declared lawful prizes of war, in conformity with the declaration issued from the Ministry of Finance, the 27th of November of the foregoing year.

"The government of his Imperial Majesty, whilst leaving all its mercantile harbours open to the merchant vessels of neutral countries, can nevertheless not take upon itself any responsibility for injuries and losses which these vessels may sustain from the operations of war.

British and French subjects may reside in Russia.

"The Minister of Finance, as far back as the month of October last year, when rumours of war became prevalent, declared in the name of his Majesty the Emperor to the English merchants trading to St. Petersburg, that even in case of war they need have no apprehension either for themselves or their property, and they might depend upon the same protection which they had hitherto enjoyed, such protection and freedom from danger will continue to be extended to all British and French subjects without exception (to whatever trade or profession they may belong) who, quietly attending to their own business, observe the established laws of the country, and refrain from all acts forbidden by them" (*p*).

It is to be observed, that in this document no reference is made to the commissioning of privateers, or the issuing of letters of marque; so that the Russian government cannot be presumed to have waived this right in the present war after the example of the Western Powers.

SECTION II.

TRADE WITH THE ENEMY.

On the 15th of April, 1854, an Order in Council was issued, which, after reciting the declaration of the 28th of March already referred to, proceeded as follows:—

"It is this day ordered, by and with the advice

(*p*) See Appendix.

of her Majesty's Privy Council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions all goods and merchandize whatsoever, to whomsoever the same may belong, and to export from any port or place in her Majesty's dominions to any port not blockaded, any cargo or goods, not being contraband of war, or not requiring a special permission, to whomsoever the same may belong.

Orders in Council of 15th April, 1854.

"And her Majesty is further pleased, by and with the advice of her Privy Council, to order, and it is hereby further ordered, that save and except only as aforesaid, all the subjects of her Majesty, and the subjects or citizens of any neutral or friendly state, shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places, wheresoever situate, which shall not be in a state of blockade, save and except that no British vessel shall, under any circumstances whatsoever, either under or by virtue of this order, or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession of her Majesty's enemies" (*q*).

With reference to this order we may remark, that it is a well established maxim of the law of nations, that all trading with the public enemy is illegal, except under the express sanction of the state (*r*). In England this rule has long prevailed (*s*), and all such traffic, except under the

(*q*) See Appendix.

(*r*) "Ex natura belli commercia inter hostes cessare non est dubitandum." Bynkershoek, L. J. P. l. 3. In the Black Book of the English Admiralty, the prohibition against such trading is expressed as follows:—"Soit enquis de ceulx qui *entre communent*, vendent, ou achatent avec aucun des ennemys de nostre Seigneur le Roy, sans license especiale du Roy ou de son admiral." Art. 3.

(*s*) It appears from Rolle's Abridgement, 173, that in the reign of Edward the Second, trading with Scotland

protection of a royal license, is strictly prohibited. A few of the leading cases upon this point will best illustrate the rigour with which this rule has been applied.

The Irish case.

In 1780, this country being then at war with France, a cargo of wine was shipped from Bordeaux to Dublin. It was proved that from the commencement of the war the commissioners of revenue and excise in Ireland had permitted such traffic to be carried on between these places in the same manner as in time of peace. An act of the Irish legislature had moreover been passed after the breaking out of hostilities, which raised the duty upon French wine. There was no doubt, therefore, that the trade was openly and expressly sanctioned by the local authorities in Ireland. But the ship and cargo were both condemned by the Court of Admiralty, and the sentence was affirmed on appeal to the House of Lords (*t*).

The Grenada case.

During the temporary occupation of the island of Grenada by the French, a ship was chartered by certain British merchants to convey provisions to that colony. That the occupation was regarded as temporary by the British government, appeared from an act passed in the 20 Geo. 3, reciting, that the island of Grenada had been taken by the French king, but that it was just and expedient to give every relief to the proprietors of estates in the said island, and enacting that no goods or merchandize of the growth, produce, or manufacture of the said island, on board neutral vessels going to neutral ports, should be liable to condemnation as prize.

Trading with the enemy.

It was argued by the claimants in this case, that considering the peculiar circumstances of the island, and the favor shewn to its inhabitants by the British Legislature, the shipment of provisions, of

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was held to be illegal, that kingdom being then at enmity with England.

(*t*) The *Irish case*, cited by Lord Stowell in *The Hoop*, 1 Rob. 205.

which it stood much in need, was a justifiable act. But the cargo was condemned as enemy's property by the Admiralty Court of Barbadoes, and this sentence was affirmed on appeal (*u*).

The Fortuna. *The Fortuna*, a Swedish ship carrying wine, the property of British merchants, from Barcelona to Calais, was taken by a Spanish frigate (18th April 1793) but released by the Spanish Admiralty Court on the ground that she was a neutral ship, and that her cargo had been laden on board *before* war was declared against France. But the cargo was afterwards condemned by the Court of Appeal in England; the transaction being held an illegal trading with the enemy (*v*).

The Hoop. Certain merchants in Glasgow extensively engaged in trade with Holland, had been permitted by royal license to import various articles from that country while it was occupied by the French. But after the passing of certain Acts of Parliament (35 Geo. 3, c. 15; 36 Geo. 3, c. 76; 37 Geo. 3, c. 12) they were assured by the Commissioners of Customs in Scotland, acting under the advice of their law officers, that no license was in future required. Under this authority they continued to trade without a license, but Lord Stowell, while admitting the hardship of the case, pronounced such trading to be illegal, according to the uniform decisions of the Court.

The Hoop. Lord Stowell's opinion. "The rule," observed his Lordship, in this case, "has been rigidly enforced, where Acts of Parliament have on different occasions been made to relax the Navigation law and other revenue acts; where the government has authorized, under the sanction of an Act of Parliament, "a *homeward* trade from the enemy's possessions, but has not specifically protected an *outward* trade to the same, though intimately connected with that homeward trade,

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(*u*) The *Granada case*, see *The Hoop*, 1 Rob. 207.
(*v*) Ibid. 211.

and almost necessary to its existence; that it has been enforced where strong claims not merely of convenience, but almost of necessity, excused it on behalf of the individual; that it has been enforced where cargoes have been laden before the war, but where the parties have not used all possible diligence to countermand the voyage after the first notice of hostilities; and that it has been enforced not only against the subjects of the Crown, but likewise against those of its allies in the war, upon the supposition that the rule was founded on a strong and universal principle, which allied states in war had a right to notice and apply mutually to each other's subjects (*w*).

(*w*) *The Hoop*, 1 Rob. 216. The cases here cited, it will be seen, all apply to trading during actual hostilities. But questions have sometimes arisen as to the shipment of goods before war has been declared. Thus in the case of *The Packet de Bilbao*, British goods shipped on board a Spanish vessel on account of Spanish merchants, and captured on the voyage, were restored upon the ground that they were so shipped, not only before war was declared, but before such an event was deemed probable. 2 Rob. 133. The case of *The Abby* was decided upon similar principles. The Court, in pronouncing judgment, observed, "No case has been produced in which a mere *intention* to trade with the enemy's country, contradicted by the fact of its not being an enemy's country, has enured to condemnation. Where a country is known to be hostile, the commencement "of a voyage towards that country may be a sufficient act of illegality; but where the voyage is undertaken *without that knowledge*, the subsequent event of hostility will have no such effect." *The Abby*, 5 Rob. 254.

The only instance in which the general rule against trading with the enemy appears to have been relaxed, was in the case of a person who had been a British consul in Spain, and who had purchased a quantity of wine, not in the ordinary course of trade, but for the supply of the British fleet in the Mediterranean. In restoring this property, the Court observed that it did

But the rule has not been confined to direct trading; it has been applied with equal strictness to *indirect* trading with the enemy.

Indirect trading.

This latter point was definitively settled in the case of *Potts* v. *Bell*, which was decided by the Court of Queen's Bench in the year 1800. In this case goods had been purchased in the enemy's country (Holland) by the agent of English merchants, and shipped for England in a neutral ship; and it was held that such trading was illegal. Lord Kenyon said, "That the reasons urged, and the authorities cited, were so many, so uniform, and so conclusive, to shew that a British subject's trading with the enemy was illegal, that the question might be considered finally set at rest, and that it was needless to delay giving judgment for the sake of pronouncing the opinion of the Court in more formal terms" (*x*).

This rule has since been uniformly recognised. "If an English subject," says Lord Stowell, "employs a neutral to purchase for him in the country of the enemy, the neutral is in such a case but *the mere agent;* the goods then must be considered to pass immediately from the enemy to the British subject, and such a transaction would be illegal" (*y*).

Partners.

Upon the same principle where two partners, one of whom resided in the United States and the other in England, shipped goods in America for France, which were captured on the voyage, the share belonging to the English partner was condemned. And it appears from the report of the case that the same rule would have been applied to the share of a dormant partner (*z*).

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not break in upon any one of the principles which it was bound to sustain as against British subjects trading with *bonâ fide* the enemy. *The Madonna delle Gracie*, 4 Rob.

(*x*) *Potts* v. *Bell*, 8 Term Rep. 548. See also *The Jonge Pieter*, 4 Rob. 79.

(*y*) *The Samuel*, 4 Rob. 284, note. But a purchase *bonâ fide* from a *neutral* in an enemy's port is lawful. Ibid. 199.

(*z*) *The Franklin*, 6 Rob. 131.

Aliens.

A foreigner residing in a belligerent country for the purposes of trade, and evincing a fixed intention of remaining there after the war has commenced, is held by the law of nations to be a subject of that country, and his property is, consequently, liable to capture by a hostile power. And it is not essential (*a*) to this end that a domicile, in the ordinary sense, should have been established. Lord Stowell has distinctly stated, "That a man having mercantile concerns in two countries, and acting as a merchant of both, must be liable to be considered as a subject of both, with regard to the transactions originating respectively in these countries" (*b*). In accordance with these principles an American consul resident at Calcutta was held to be a British subject in so far as regarded his disability to trade with the enemy. "He must take his situation," it was observed, "with all its duties, and amongst those duties, the duty of not trading with the enemies of this country" (*c*).

Rules recognised in America.

These stringent rules against trading with the enemy have been recognised to their full extent in the United States. "The inhibition," says Mr. Chancellor Kent, "reaches to every communication direct *or circuitous*. All endeavours at trade with the enemy by the intervention of third persons, or by partnerships, have equally failed, and no artifice has succeeded to legalise the trade without the express permission of the government." And again, "All reservation of risk to the neutral consignors, in order to protect belligerent consignees, are held to be fraudulent, and their numerous and strict rules of the maritime jurisdiction of the prize courts are intended to uphold the rights of lawful maritime capture, and to prevent frauds and pre-

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(*a*) *i. e.* a domicile for the purposes of succession.

(*b*) *The Jonge Klassina*, 5 Rob. 297. See also *The President*, 5 Rob. 277. *The Venus*, 8 Cranch, 253.

(*c*) *The Indian Chief*, 3 Rob. 12.

serve candour and good faith in the intercourse between belligerents and neutrals" (*d*).

Such being the rules of law with regard to trading with the public enemy, we have next to consider how far the operation of these rules is affected by the Order in Council of the 15th April last.

Crown may grant licenses.

The importance of foreign commerce, and the fluctuations to which it is necessarily subject, have in most modern states led to an occasional departure from the ordinary laws or principles under which it is carried on. In England the Crown is invested with various privileges in connection with the trade and manufactures of the kingdom, and among others with that of suspending in time of war the general prohibition against trading with an enemy. We are bound to assume that this power is only exercised upon grounds of just expediency, and with a view to the general welfare; but of the circumstances which may demand this temporary suspension of the law, the sovereign is sole judge. "It is indubitable," says Lord Stowell, "that the king may, if he pleases, give an enemy liberty to import: he may by his prerogative of peace and war place the whole country of Holland in a state of amity; or, *a fortiori*, he may exempt any individual from the operation of a state of war" (*e*). The mode in which such privilege is granted to any individual or to any class of individuals, is by royal license; and when it is intended that the privilege should be general without reference to particular persons, this object is effected by an Order in Council, setting forth the conditions under which commercial intercourse with the enemy's country will be permitted (*f*).

Order in Council.

(*d*) Commentaries, Part 1, Lecture 4.

(*e*) *The Hoffnung*, 2 Rob. 162.

(*f*) On the 19th of February, 1800, an Order in Council was issued by which it was declared, "that it shall be lawful for any of his Majesty's subjects to

As such permissions, therefore, whether special or general, are in their nature essentially the same, and differ only in degree, the same principles of law are applicable to both (*g*). During the last war the practice of granting licenses was very frequent—particularly during the system of blockade, established throughout the greater part of Europe in consequence of the Berlin and Milan decrees—and the rules to be observed in their construction underwent frequent discussion both in the Admiralty and in the common law courts. It was often contended that licenses, being privileges granted by the sovereign to particular individuals, ought to be construed in the same strict manner as other royal grants. But the decisions seem to shew, upon the whole, that where the parties acted in good faith, the intentions of the Crown were liberally carried into effect (*h*). This remark is especially applicable to the common law courts, which evinced a disposition to construe these instruments less strictly than the Court of Admiralty. Effect of.

In a case where a license had been granted to a Spaniard domiciled in England, at a time when Spain was at war with this country, Lord Ellenborough, in delivering the judgment of the Court, laid down certain principles which seem to be especially deserving of attention with reference to the recent

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purchase and import into this kingdom any Spanish wool in any ship or vessel belonging to any kingdom or state in amity with his Majesty, notwithstanding the purchase and importation thereof may be deemed a trading with his Majesty's enemies, and notwithstanding the same might be liable to capture as the property of his Majesty's subjects trading with the enemy, in case this order had not been made." 2 Rob. Rep. Appendix, 7.

(*g*) Chitty on the Law of Nations, 286.

(*h*) *The Juno*, 2 Rob. 117. But see also *The Cosmopolite*, 4 Rob. 11. *The Twee Gebraeders*, 1 Edwards, 95. *The Jonge Johannes*, 4 Rob. 263.

Order in Council, which undoubtedly sanctions trading, under certain conditions, with the country of an enemy.

"It appears by the case," said his Lordship, "that this was an action brought by a native Spaniard domiciled here in time of war with Spain, and specially licensed by his Majesty for the purpose of the very commerce which it was the object of the policy declared upon in this action to ensure. The case cited of *Wells* v. *Williams*, 1 Lord Raymond, 282, established that a plaintiff, an alien enemy in respect of the place of his birth, may, under similar circumstance of domicile, be allowed to sue in our courts. The legal result of the license granted in this case is, that not only the plaintiff, the person licensed, may sue in respect of such licensed commerce in our courts of law, ***but that the commerce itself is to be regarded as legalized for all purposes of its due and effectual prosecution.*** To hold otherwise would be to maintain a proposition repugnant to national good faith and the honor of the crown. The crown may exempt any persons and any branch of commerce, in its discretion, from the disabilities and forfeitures arising out of a state of war; and its license for such purpose ought to receive the most liberal construction." And his Lordship further added, "Whatever commerce of this sort the Crown has thought fit to permit (which in its prerogative of peace and war the Crown is, by its sole authority, competent to prohibit or permit) must be regarded by all the subjects of the realm, and by the courts of law, when any question relative to it comes before them, as legal, with all the consequences of its being legal; one of which consequences *is a right to contract with other subjects of the country for the indemnity and protection of such property in the course of its conveyance to its licensed place of destination, though an enemy's country, and for the purpose (as it probably will be in most cases) of being there de-*

Full effect to be given to such permission.

livered to an alien enemy, as consignee or purchaser (*i*).

The question raised in this case was whether an insurance of goods imported into England from an enemy's country, was valid under the circumstances of the English domicile and the license, and the Court decided in the affirmative. The license gave the right to import, and the right to import, it was held, implied the right to insure. In short, to use Lord Ellenborough's words, the commerce was held to be "legalized for all purposes of its due and effectual prosecution." Assuming, then, as we believe we have a right to do, that an Order in Council is to be interpreted according to the same rules as a special license, it is necessary to consider how far our trade with Russia has been legalized by the Order of the 15th April 1854. Orders in Council.

First as to the import trade; the Order declares that "all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions, all goods and merchandise whatsoever, to whomsoever the same may belong" (*k*). It is clearly intended by these words, that Russian produce, the property of Russian subjects, may be imported either into the United Kingdom or into any British colony or territory, provided the produce in question is imported in neutral vessels, which are *bonâ fide* neutral property. And it would also appear that Russian property might be imported into the British dominions under this permission in French or Turkish vessels. The terms of the Order are that all neutral "*or* friendly vessels, being neutral *or* friendly property," shall be allowed to import pro- Import trade from Russia.

(*i*) *Usparicha* v. *Noble*, 13 East, 332. See also *Timson* v. *Merac*, 9 East, 35, and *Rawlinson* v. *Janson*, 12 East, 223.

(*k*) See definition of "property to whomsoever belonging." *The Cousine Mariana*, Edwards Rep. 347.

duce of every description, and this disjunctive definition can only be explained by including, under the head of "friendly," the ships belonging to her Majesty's allies in the present war, in contradistinction to those of neutral nations.

Export trade.

Secondly, as to the export trade, it is permitted to export in all such vessels "from any port or place in her Majesty's dominions, to any port not blockaded, any cargo or goods, not being contraband of war, or not requiring a special permission, to whomsoever the same may belong." Under the limitations here specified, therefore, both British and foreign produce and manufactures may be exported from any part of the British to any part of the Russian dominions in neutral or friendly ships. That it is intended strictly to exclude all British vessels from trading or holding commercial intercourse with the enemy, clearly appears from what follows, viz. "it is hereby further ordered, that save and except only as aforesaid, all the subjects of her Majesty and the subjects or citizens of any neutral or friendly state shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places, wheresoever situate, which shall not be in a state of blockade, save and except that *no British vessel shall, under any circumstances whatsoever*, either under or by virtue of this order, or otherwise, be permitted or empowered to enter *or communicate with* any port or place which shall belong to or be in the possession or occupation of her Majesty's enemies."

Importance of concessions made.

Notwithstanding this necessary reservation, the concessions thus made to the interests of trade and commerce, not only of this, but of all nations, are alike comprehensive in themselves, and unprecedented in the history of former wars. An experiment has been made of which it is impossible to calculate the results, but in the success of which every friend of humanity must feel a lively interest. Montesquieu asserts that the law of nations

is founded on the great principle "that different states ought, in time of peace, to do each other as much good, and in time of war, as little injury as possible, *without prejudicing their real interests* (*l*). The concessions to which we have referred appear to have been dictated in the spirit of this aphorism, but experience can alone determine whether so wide a departure from former usage can be made without impairing our belligerent powers, and thus protracting a contest with an enemy who is dependent to a great extent upon foreign commerce for his wealth and resources. To discuss the policy of these concessions, however, is not the object of this publication. We have here only to consider their legal effects; and these are of great importance as well as novelty, both to British and to neutral commerce.

And their extent.

It may be fairly assumed that it is the aim and intention of this Order in Council that all trade between the British and Russian dominions should be permitted, except where it interferes with the ordinary operations of war, or where the state of the law presents very serious obstacles to such intercourse. We have seen that a contract made with an alien enemy is illegal by the common law of the kingdom; and even a royal license cannot remove the personal disability under which he labours of suing in a British court of justice (*m*). No agreement, therefore, between a British subject and the subject of a hostile state can be enforced in this country. But a contract with a neutral who imports enemy's property under a royal permission, stands on a different footing. He engages in a traffic which would have been illegal without that permission, but which is perfectly legal with it; and he labours under no personal disability of suing and being sued in British courts. Hence no

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(*l*) Spirit of Laws, b. 1, c. 3.
(*m*) *Kensington* v. *Inglis*, 8 East, 273.

law is infringed by throwing the carrying trade to and from the enemy's country into the hands of neutrals; but many difficulties must have arisen had a direct and uninterrupted traffic been permitted. We have referred only to one of these; but various others might be readily adduced, were it necessary to strengthen so plain and obvious a proposition.

British subjects domiciled in neutral states.

That an import and export trade with Russia, under the limitations specified in the Order in Council, may be freely carried on in neutral or friendly vessels so long as that Order remains in force, is, therefore, a point beyond dispute. And we may add, that this right of trading with the enemy's country is not confined to the subjects of a neutral state. If a British subject is domiciled in a foreign country, he is held for the time to be a subject of that country for all civil purposes, and he may exercise all the commercial privileges belonging to it. It has been held accordingly that a natural born subject of this country, domiciled in a foreign and friendly country, may so far enjoy the privileges of his adopted residence as to trade with a country at enmity with this. In the case in question, a British subject domiciled in the United States, which at the time was in amity with this country, effected a policy of insurance on a ship and cargo proceeding to Denmark, which at the time was at war with Britain, and the policy was held valid (*n*).

This case, decided towards the close of the last war (in 1813), is of great practical interest with reference to the present. It would appear from it that a British merchant domiciled in the United States, or in any other neutral country, may trade with a country at enmity with this, and that such trading will not be held illegal in our common law Courts. The same principles it is obvious would

(*n*) *Bell* v. *Reid*, 1 M. & S. 726.

apply to British subjects domiciled for commercial purposes in Sweden, Denmark, or any other neutral state in Europe. They are, in short, regarded for the time as subjects of the country of their adoption, in so far as their trading privileges are concerned.

British subjects domiciled in hostile states.

The rules which apply to a British subject domiciled in a neutral country, hold equally good with regard to an enemy's country. If a British subject domiciled in the latter before the commencement of hostilities, voluntarily continues his residence during the war, he so far loses his rights of an Englishman that he cannot maintain an action in our Courts. The disabilities which attach to the subjects of his adopted country attach also to him, and he is for all commercial purposes regarded as an alien enemy. "The question is," Lord Alvanley observed in a case of this description, "whether a man who resides under the allegiance and protection of a hostile state for all commercial purposes, is not to be considered to all civil purposes as much an alien enemy as if he were born there? If we were to hold that he was not, we must contradict all the modern authorities upon this subject" (*o*). In a similar case Lord Ellenborough said, "If a British subject resides in an enemy's country without being detained as a prisoner of war, he is precluded from suing here. Nor does it signify that he is recognised as a citizen by a neutral state." In this case the plaintiff appeared to have been an Irishman by birth, but was residing at Paris when the action was brought, and proof of his having been naturalized in the United States was not admitted (*p*).

(*o*) *McConnell* v. *Hector*, 3 B. & P. 113.

(*p*) *O'Mealey* v. *Wilson*, 1 Camp. 483. Prisoners of war do not fall under this rule, as they are not voluntary residents in the enemy's country. As to contracts made by them, see *Antoine* v. *Morshead*, 6 Taunt. 237. *Willison* v. *Patteson*, 7 id. 447, 449. S. C. 1 Moore, 133. As

Residence in Russia.

The principle upon which these two classes of cases have been decided is obviously the same. It is the voluntary domicile, or residence for trading purposes (*q*), which affects the party for the time being, either with the neutral or the hostile character, as the case may be; but it is hardly necessary to add, that the duties of allegiance which every British subject owes to the Crown remain in full force, whatever may be the nature or extent of the privileges he may acquire in any foreign state. We have seen, that the Emperor of Russia has declared that subjects of Great Britain who choose to remain in his dominions during the present war, shall enjoy the same protection for their persons and their property as was extended to them in time of peace. But whoever takes advantage of this permission must be regarded by the law of England, for all commercial purposes, as an alien enemy, and will of necessity be subjected to all the commercial disabilities which attach to that character (*r*).

SECTION III.

JURISDICTION.

Letter of Lord Stowell.

The principles upon which all questions relating to naval capture are to be determined, were so clearly laid down by Lord Stowell and Sir John Nicholl in a letter addressed to the American minister, Mr.

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to prisoners of war in England, see *Sparenburgh* v. *Bannatyne*, 1 B. & P. 163. *Maria* v. *Hall*, 2 B. & P. 236.

(*q*) As was before remarked, a *domicile*, in the strict sense of the term, does not appear to be necessary for the purpose. See *The Jonge Klassina*, 5 Rob. 297. *The Herman*, 4 Rob. 228.

(*r*) *De Luneville* v. *Phillips*, 2 Bos & P. New Rep. 97.

Jay, in the year 1794 (*s*), that I shall here cite the passage explaining the recognised mode of procedures in such cases, as practised in the chief maritime states of Europe, and approved by these two eminent authorities.

" By the maritime law of nations, universally and immemorially received, there is an established method of determination, whether the capture be or be not lawful prize.

Prize Courts.

" Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize, in a court of admiralty, judging by the law of nations and treaties.

The proper and regular court for these condemnations is the court of that state to whom the captor belongs.

Proceedings.

" The evidence to acquit or condemn, with or without costs or damages, must in the first instance come merely from the ship taken, viz. the papers on board, and the examination on the oath of the master and other principal officers; for which purpose there are officers of Admiralty in all the considerable seaports of every maritime power at war, to examine the captains and other principal officers of every ship brought in as a prize upon general and impartial interrogatories (*t*). If there do not appear from thence ground to condemn as enemy's property, or as contraband goods going to the enemy, there must be an acquittal, unless from the aforesaid evidence the property shall appear so doubtful, that it is reasonable to go into further proof thereof.

" A claim of ship or goods must be supported

(*s*) See the American edition of Sir C. Robinson's Reports, vol. 1, Appendix.

(*t*) For the form of these see ibid.

by the oath of somebody, at least as to belief. The law of nations requires good faith. Therefore every ship must be provided with complete and genuine papers; and the master at least should be privy to the transaction.

Evidence.

"To enforce these rules, if there be false or colourable papers, if any papers be thrown overboard, if the master and officers examined *in preparatorio*, grossly prevaricate, if proper ships' papers are not on board, or if the master and crew cannot say whether the ship or cargo be the property of a friend or enemy, the law of nations allows, according to the different degrees of misbehaviour or suspicion, arising from the fault of the ship taken, and other circumstances of the case, costs to be paid, or not to be received by the claimant in case of acquittal and restitution. On the other hand, if a seizure is made without probable cause, the captor is adjudged to pay costs and damages. For which purpose all privateers are obliged to give security for their good behaviour; and this is referred to, and expressly stipulated by many treaties.

"Though from the ship's papers and the preparatory examinations, the property does not sufficiently appear to be neutral, the claimant is often indulged with time to send over affidavits to supply that defect. If he will not shew the property by sufficient affidavits to be neutral, it is presumed to belong to the enemy. Where the property so appears from evidence not on board the ship, the captor is justified in bringing her in, and excused paying costs, because he is not in fault; or, according to the circumstances of the case, may be justly entitled to receive his costs.

Sentence.

"If the sentence of the Court of Admiralty is thought to be erroneous, there is in every maritime country a superior Court of Review, consisting of the most considerable persons, to which the parties who think themselves aggrieved may appeal; and

this superior court judges by the same rules which govern the Court of Admiralty, viz. by the Law of Nations and the treaties subsisting with that neutral power whose subject is a party before them. Court of Review.

"If no appeal is offered, it is an acknowledgment of the justice of the sentence by the parties themselves, and conclusive.

"This manner of trial and adjudication is supported, alluded to, and enforced by many treaties.

"In this method all captures at sea were tried during the last war by Great Britain, France and Spain, and submitted to by the neutral powers. In this method, by Courts of Admiralty, acting according to the law of nations, and particular treaties, all captures at sea have immemorially been judged of in every country in Europe" (*u*).

With reference to the question of jurisdiction in the present war, a convention was signed between the governments of Great Britain and France on the 10th of May last, which provides for the case of joint captures being effected by vessels of war belonging to the allied powers. Provision is also made for cases of *constructive* capture, as where the presence of a friendly vessel may be supposed to facilitate the capture, although it takes no direct part in it. The regulations to be observed upon these points by the two powers, are laid down in the following articles:— Convention of 10th May, 1854.

"1. When a prize shall be made in common by the naval forces of the two countries, the adjudication of it shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

"2. When a prize shall be made by a cruiser of one of the two allied nations in presence and in

(*u*) As to the other forms and proceedings requisite, see the remainder of this letter, *ubi supra*.

sight of a cruiser of the other, which shall have thus contributed to intimidate the enemy and encourage the captor, the adjudication of it shall belong to the jurisdiction of the actual captor.

Jurisdiction. "3. In case of the capture of a merchant vessel belonging to one of the two countries, the adjudication of it shall always belong to the jurisdiction of the country, to which the captured vessel belongs; the cargo in so far as the adjudication is concerned, shall share the lot of the vessel itself" (*v*).

(*v*) See Appendix for the whole of the convention and the regulations as to distribution of prize money, &c.

CHAPTER III.

SECTION I.

CONTRACTS, INCLUDING FREIGHT AND INSURANCE.

Transfers *in transitu*

We have seen that all contracts made with the public enemy in time of war are void; and the same rule applies to contracts made in contemplation of war. Thus a transfer *in transitu* of property to a neutral, will not defeat the belligerent right of capture should hostilities break out before delivery of the cargo to the consignee. Such a transfer, if war is imminent, will be deemed an attempt to protect the goods from seizure, and will therefore be held illegal. "In the ordinary course of things," Lord Stowell has observed, "in time of peace, it is not denied that such a contract may be and effectually made, according to the usage of merchants. When war intervenes, another rule is set up by Courts of Admiralty, which interferes with the ordinary practice. In a state of war existing *or imminent*, it is held that the property shall be deemed to continue as it was at the time of shipment till the actual delivery; this arises out of the state of war, which gives a belligerent a right to stop the goods of his enemy. If such a rule did not exist, all goods shipped in the enemy's country would be protected by transfers, which it would be impossible to detect. It is on that principle held, I believe as a general rule, that property cannot be

Transfers *in transitu.*

converted *in transitu*, and in that sense I recognise it as the rule of this Court" (*a*).

Upon the same principle, reservations of risk to the neutral consignor in order to protect the belligerent consignee, are held invalid. Thus a cargo shipped during the last war ostensibly on account of American merchants, but which the master deposed would have become the property of the French government upon delivery, was condemned. In this case it was observed by the Court that, "It had always been the rule of the Prize Court, that property going to be delivered in the enemy's country, and under a contract to become the property of the enemy *immediately* on arrival, if taken *in transitu* is to be considered as enemy's property. When the contract is made in time of peace, or without any contemplation of war, no such rule exists. But in a case like the present, where the form of the contract was formed directly, for the purpose of obviating the danger apprehended from approaching hostilities, it is a rule which unavoidably must take place" (*b*). But if a shipment is made in time of peace, and not in anticipation of war, and the contract lays the risk upon the consignor, the legal property will remain in him until the goods are delivered; and it has been held that in such a case they are not liable to capture in the event of hostilities breaking out before the voyage is completed (*c*). The latter case differed from the two former in the essential fact, that the parties evinced no intent to defeat the belligerent right of capture.

Bills of exchange.

A bill of exchange drawn by an alien enemy on his debtor in Great Britain, and indorsed to the plaintiff, a British subject resident in the hostile country, cannot be recovered on even after the

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(*a*) *The Vrow Margaretha*, 1 Rob. 337.
(*b*) *The Sally Griffiths*, 3 Rob. 302.
(*c*) *The Packet de Bilboa*, 2 Rob. 133.

restoration of peace (*d*). But this rule has been so far relaxed as to allow a British prisoner of war, detained in an enemy's country, to negotiate a bill through an enemy for his subsistence. A bill was drawn in France by a British prisoner upon another British subject, who indorsed it to the plaintiff, an alien enemy, and it was held that on the return of peace the latter could recover (*e*). It was observed by the Court in this case, that the drawer might legally draw such a bill for his subsistence.

Embargo.

The threat, or even the actual imposition of an embargo, in a foreign state, will not, it appears, justify the non-performance of a contract, the terms of which are unconditional. Thus the master and the freighter of a ship, having mutually agreed, in writing, that the ship should proceed to Saint Petersburgh and there take in a *complete* cargo of goods and proceed therewith to London; and the master, after taking in at St. Petersburgh about half a cargo, having sailed away in consequence of a general rumour that a hostile embargo was about to be imposed upon British shipping by the Russian government, was held liable in damages to the freighter for the short delivery of the cargo. And in this case a jury had found that the master had acted *bonâ fide*, and under a reasonable apprehension of the consequences; and it was proved that a hostile embargo was actually imposed within six weeks after his departure (*f*).

Contract must be strictly performed.

In delivering judgment in this case, Lord Ellenborough said, "If from a change in the political relations and circumstances of this country with reference to any other contracts which were fairly and lawfully made at the time, they have become incapable of being any longer carried into effect without derogating from the clear public duty

(*d*) *Willison* v. *Patteson*, 7 Taunt. 438.
(*e*) *Antoine* v. *Morshead*, 6 Taunt. 237.
(*f*) *Atkinson* v. *Ritchie*, 10 East, 530.

which a British subject owes to his sovereign and the state of which he is a member, the non-performance of a contract in a state so circumstanced is not only excusable, but a matter of peremptory duty and obligation on the part of the subject. But in order to found this new public duty, which is to supersede the performance of his former private one, it is necessary that an actual change in the political relations of the two countries should have taken place; and that the danger to result to the public interests of his own country from an observance of the contract should be *clear, immediate, and certain.* In short, such a state of circumstances must be shewn to exist, as that the contract is no longer capable of being performed by him without a criminal compromise of his public (*g*) duty. Can anything of this kind be said, with truth, to exist in the present case. No actual change in the political relations of Great Britain and Russia had then taken place. The danger to result from remaining at Cronstadt was neither immediate nor certain; in point of fact, it attached only at the distance of many weeks afterwards. And no one can venture to suggest, even in argument, that the loading in question might not have been completed without any criminal compromise

Rules to be observed.

(*g*) This language would seem to apply to the contracts which have been entered into by various persons in this country with the Russian government for the purpose of furnishing steam vessels for the use of the Russian navy. These contracts, it is believed, were entered into without reference to the present war; and, assuming this to be the case, the parties had a legal right to make them. But circumstances have since arisen which would render the fulfilment of these agreements positively injurious to this country, and hence the executive authority has interfered to prevent them being carried into effect. It is not improbable, however, that several questions may yet arise out of these transactions, as the precise grounds upon which the seizure of these vessels was made have not as yet been made public.

of public duty. Indeed, to allow a man to withdraw himself from the performance of a distinct and positive contract, upon the ground of some speculative inconvenience suggested as *likely* to result from such performance to the general interests of the state, would afford great encouragement to disingenuous subtleties and refinements upon subjects of this kind, and would render all reliance upon the solemn stipulations of parties in commercial matters, precarious and insecure."

A subsequent case was decided upon the same principles, and it was of still greater hardship. It was agreed that a certain quantity of hemp should be shipped from St. Petersburg; and while on its way from that capital to Cronstadt, the hemp in question was seized by the Russian government and confiscated as British property. But it was held, nevertheless, that the plaintiff was entitled to recover, because the agreement to ship the hemp was absolute (*h*).

Contract to deliver at a blockaded port.

A contract between neutrals to deliver a cargo at a blockaded port is not illegal. Thus a contract to carry salt to Liverpool from Terceira, when that island was blockaded during the late civil war in Portugal, was held good. Chief Justice Tindal, in that case, said, "If the parties, knowing the fact, chose to enter into a contract like this, the party breaking it is liable to an action"(*i*). But a contract to the same effect with a belligerent subject would certainly not be sustained in the country which had imposed the blockade.

The sale of a ship *bonâ fide* transferred from an enemy to a neutral is sustained by the British Admiralty Courts. But the transfer must be ab-

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(*h*) *Splidt* v. *Heath and others*, Guildhall Sittings, 7th March, 1809, 2 Camp. 57 note.

(*i*) *Medeiros* v. *Hill*, 5 C. & P., N. P. 185. And see *ante*, p. 28.

solute; for any reservation of interest to the enemy will render the entire contract void (*k*).

Residence in a hostile country.

We have seen that a belligerent has a right to consider as an enemy every person who voluntarily resides in a hostile country, or maintains a commercial establishment there; but he is only to be regarded as such in respect of his residence or establishment in the hostile country. If the same individual has another mercantile establishment in a neutral country, his property connected with that establishment will be regarded as neutral property, and, as such, will not be liable to capture or confiscation. According to this nice distinction, there may be a partnership between two persons, one

Partners.

(*k*) *The Sechs Geschwistern*, 4 Rob. 100. There is a point of some public interest at the present time in connection with this subject, to which it may not be deemed superfluous in this place to refer. Russia, it is said, has sold several ships of war in the ports of the Mediterranean to neutral purchasers; and it may be asked whether such sales, assuming them to have taken place and made with the presumptive object of defeating the belligerent rights of her enemies, are valid according to the law of nations? From the following observations of Lord Stowell, it is not difficult to ascertain what his opinion would have been as to the validity of such transactions: "There have been many cases of enemy *merchant vessels* driven into ports out of which they could not escape, and there sold, in which, after much discussion and some hesitation of opinion, the validity of the purchase has been sustained. But whether the purchase of a vessel *built for war*, and employed as such, and rendered incapable of acting as a ship of war by the arms of the other belligerent and driven into a neutral port for shelter, whether the purchase of such a ship can be allowed, which shall enable the enemy so far to rescue himself from the disadvantage into which he has fallen, as to have the value restored to him by a neutral purchaser, is a question on which I shall wait for the authority of a superior Court before I admit the validity of such a transfer." *The Minerva*, 6 Rob. 399.

residing in a belligerent, and the other in a neutral state; and in such a case the trade of the one will be unlawful, and that of the other lawful, and the share of one partner in the joint traffic may be condemned, while that of the other is restored. It is not always easy in such cases to distinguish between the legal and the illegal traffic, but the principle in question appears to have been uniformly maintained, both in England and in the United States (*l*).

Dissolution of partnership.

With respect to partnerships existing between the subjects of hostile nations, it appears to be settled in America that they are positively dissolved by the fact of war. "This point," says Mr. Justice Story, "does not seem to have been discussed in our Courts of justice until a recent period; yet it would seem to be a necessary result of principles of public law, well established and defined. By a declaration of war, the respective subjects of each country became positive enemies to each other. They can carry on no commercial or other intercourse with each other; they can make no valid contracts with each other; they can institute no suits in the courts of either country; they can, properly speaking, hold no communication of an amicable nature with each other; and their property is mutually liable to capture and confiscation by the subjects of either country. Now it is obvious, from these considerations, that the whole ends and objects of the partnership, the application of the joint funds, skill, labour, and enterprise of all the partners in the common business thereof, can no longer be attained. The conclusion, therefore, would seem to be absolutely, that this mutual supervening incapacity must, upon the very principles applied to all analogous cases, amount to a

(*l*) *The Portland*, 3 Rob. 41. *The Hermann*, 4 Rob. 228. *The Jonge Classina*, 5 Rob. 297. *The San Jose Indiano*, 2 Gallison's Rep. 268.

positive dissolution of the partnership"(*m*). This very important question does not appear to have been ever raised, or, at all events, decided, in Great Britain.

Contracts existing before war.

Contracts existing *bonâ fide* between the subjects of hostile states before the war are not extinguished, but only suspended until the restoration of peace. The rule has been laid down as follows:—"If the two nations were at peace at the date of the contract, from the time of war taking place, the creditor could not sue, but the contract being originally good, upon the return of peace the right would survive"(*n*).

SECTION II.

FREIGHT.

Interruption of voyage by capture.

In the event of a voyage being interrupted by capture or otherwise, questions have frequently been raised as to whether freight is due for the proportion of the journey performed; and it is difficult to lay down any rules upon the subject, from the fact that the decisions of the common law

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(*m*) Story on Partnership, 447. See also *Griswold* v. *Waddington*, 16 Johns. Rep. U. S. The reasons here adduced in favor of the American doctrine, though unquestionably strong, do not appear to be conclusive. The same line of argument would apply, it may be, with less force, but upon principles clearly analogous to other contracts as well as to that of partnership. Yet we find that ordinary contracts between the subjects of contending states are not dissolved or defeated, but only suspended by the operation of war. On the restoration of peace, such contracts remain in full force with all their legal consequences; and it is difficult to see why they should fall under one rule, and contracts of partnership under another.

(*n*) *Ex parte Boussmaker*, 13 Ves. 7. *Flindt* v. *Waters*, 15 East, 260.

courts have not been uniform with those of the Courts of Admiralty. The former have generally adhered to the strict terms of the contract entered into between the parties, while the latter, exercising an equitable jurisdiction, have, under particular circumstances, refrained from exacting a literal performance of such agreement. A reference to a few of the leading cases will explain the principles upon which the decisions in both courts have proceeded.

When freight is due *pro rata itineris*

A vessel was chartered to carry a cargo of fish from Newfoundland to Lisbon. She was captured on the voyage by a French ship, but was recaptured by a British privateer, and carried to a British port. The charterer took his goods from the recaptors and shipped them, not to Lisbon, as he originally intended, but to a port in Spain, and it was held that, under these circumstances, freight was due for the proportion of the voyage performed. In pronouncing judgment Lord Mansfield said, "Here is a capture without any fault of the master, and then a recapture; *the merchant does not abandon, but takes, the goods, and does not require the master to carry them to Lisbon, the port of delivery.* There can be no doubt but that *some* freight is due; for the goods were not abandoned by the freighter, but received by him of their captor. The question will be, what freight? The answer is, a rateable freight; *i. e., pro ratâ itineris*"(*a*).

Acceptance of goods by charterer.

But by several subsequent decisions, it appears that the acceptance of the goods by the freighter in this case was regarded as a new agreement between the parties, and that such an agreement must be either expressly made or implied, before freight will become payable *pro ratâ itineris*. In a case of great hardship where this claim was raised, but

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(*o*) *Luke and another* v. *Lyde*, 2 Burr. 882, and 1 Black. Rep. 190.

where the freighter resisted the claim on the ground that the terms of the contract had not been complied with, Lord Ellenborough said, "The parties have entered into a special contract, by which freight is made payable in one event only, that of a right delivery of the cargo according to the terms of the contract; and that event has not taken place. There has been no such delivery; and consequently the plaintiff is not entitled to recover. He should have provided in his contract for the emergency which has arisen" (*p*).

No freight payable unless goods are accepted.

In another case where an American vessel had been chartered to carry a cargo from *Charlestown* to certain ports in *Holland*, but did not proceed further than London in consequence of the risk of capture on the Dutch coast, it was held that she was not entitled to freight *pro ratâ itineris*. Lord Ellenborough observed "It is clear that in this case the plaintiff can have no claim for freight. Freight could only be earned by performing the terms of the charter party. Then is he entitled to any sum by way of compensation for the carriage of the goods from *Charlestown* to the port of London? His right to compensation must arise out of some contract expressed or implied. There is no express contract set up; and from what can we imply a promise to pay for the carriage of the goods to *England?* They are brought here instead of being conveyed to their port of destination, and an application being made to the Lord Chancellor to prevent their being tortiously disposed of by the captain, they were taken possession of on behalf of the consignee, without prejudice to the rights of the parties. *This is no acceptance of the goods*

(*p*) *Liddard* v. *Lopez and another*, 10 East, 526. See also *Cook* v. *Jennings*, 7 Term Rep., K. B. 381. *Molloy* v. *Backer*, 5 East, 316. *Hunter* v. *Prinsep*, 10 East, 378.

short of the port of destination, and no foundation for a promise to pay *pro ratâ itineris*" (*q*).

Different rules observed by Admiralty Courts.

These cases, therefore, establish that at common law acceptance of the goods is necessary to found an implied contract for the payment of freight *pro ratâ itineris*. But in the Admiralty Courts these strict rules have not been recognised. Alluding to such cases as that last referred to, Lord Stowell has expressed himself to the following effect:—"In the case of the American ships bound to France or Holland, which were brought into the ports of this country under the prohibitory law, the *full* freight was pronounced to be due where the owners of the cargoes elected to sell here, where they did not elect to sell here, the Court left it to them to settle the freight with the owners of the ships. The Court considered a voyage from America to this country *very nearly the same, in effect*, as a voyage to those contiguous countries to which those vessels were originally destined; in all probability, the markets of this country were not less favourable than in the blockaded ports, and no doubt the sale was effected with every attention to the interests of the owners of the cargo. In those cases, the Court gave the master the full benefit of the freight, not by virtue of his contract, because looking at the charter party in the same point of view as the Courts of common law, it could not say that the delivery at a port in England was a specific performance of its terms. But there being no contract which applied to the existing state of facts, the Court found itself under an obligation to discover what was the relative equity between the parties" (*r*).

In accordance with these equitable principles, the learned Judge held that a vessel chartered in the United States to carry a cargo to Lisbon, but

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(*q*) *Osgood* v. *Groning*, 2 Camp. 466.
(*r*) *The Friends*, 1 Edwards, 246.

which was captured after having reached the mouth of the Tagus, was entitled to one-half of the freight due. The owner claimed the whole, as the ship had reached the entrance of the destined port; the merchant contended that none was due, because the cargo was not delivered according to the terms of the charter party; but the Court held that under the circumstances equity suggested a division of the loss (*s*). In a Common Law Court, it cannot be doubted, that this case would have received a different decision.

When captor is entitled to freight.

We have seen that if enemy's goods are captured in a neutral ship the neutral is entitled to freight, not *pro ratâ itineris*, but for the whole voyage (*t*). If, on the other hand, the goods of a neutral are taken in an enemy's ship, the captor will be entitled to freight only in the event of his carrying them to their original port of destination (*u*). If he carries them to a different port, and their owner even sells them there, he cannot claim freight (*v*).

Contraband.

Upon contraband goods, captured in a neutral ship, no freight is payable (*w*); even although the master be ignorant of their true quality, for he is bound to know the nature and contents of his cargo.

SECTION III.

INSURANCE.

It may be asked whether enemy's property, imported into Great Britain in neutral ships, under

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(*s*) *The Friends*, 1 Edwards, 246.
(*t*) *Ante*, p. 14.
(*u*) *The Fortuna*, 4 Rob. 278.
(*v*) *The Vrow Anna Catharina*, 6 Rob. 269.
(*w*) *The Mercurius*, 1 Rob. 288. *The Oster Risoer*, 4 Rob. 199.

the Order in Council of the 15th of April, or British property exported to Russian ports, under that authority, may be legally insured by British or neutral subjects. And in accordance with the principles laid down by Lord Ellenborough in a case, to which I have already drawn the reader's attention (*x*), it would seem that this question may be answered in the affirmative. His Lordship stated while delivering judgment in that case, that if the Crown thought fit to permit commercial intercourse with the enemy's country, such commerce "is to be regarded as legalized for all purposes of its due and effectual prosecution." But he went further than this, for he stated that one of the consequences of such permission was "a right to contract with other subjects of the country for the *indemnity and protection of such property* in the course of its conveyance to its licensed place of destination, *through an enemy's country*, and for the purpose, as it probably will be in most cases, of being there delivered to an alien enemy." The question in fact was as to the validity of a policy of insurance effected under license, upon enemy's property, and the court as we have seen held the insurance to be lawful. The importance of this decision is obvious; and the principles laid down in Lord Ellenborough's judgment, are stated by Mr. Justice Park, in his excellent work upon Insurance, "as fraught with great good sense and sound policy, and must be applicable at all times when trade is permitted to be carried with the subjects of states at war with this country" (*y*).

Insurance of enemy's property.

Remark of Mr. Justice Park.

It is true that Lord Ellenborough himself on a subsequent occasion seems to have thought that he had gone too far in this case; but the principles laid down by him as above stated were afterwards fully adopted and confirmed by the Exchequer

(*x*) *Ante*, p. 66. *Usparicha* v. *Noble*, 13 East, 332.
(*y*) Park on Insurance, p. 134.

Chamber in the case of *Flindt* v. *Scott* (*z*). If then a license to an individual to import enemy's goods implies a right to insure, it is difficult to see upon what principle a policy upon goods imported under the same authority, though that authority is expressed in a different form, should be held unlawful.

Loss by capture.

In case of capture the insurer is liable for the loss. In the leading case which established this rule Lord Mansfield said, "The ship is *lost* by the capture; though she be never condemned at all, nor carried into any port or fleet of the enemy, and the insurer must pay the value. If after condemnation the owner recovers or retakes her, the insurer can be in no other condition than if she had been recovered or retaken before condemnation. The reason is plain from the nature of the contract. The insurer runs the risk of the insured, and undertakes to indemnify. He must therefore bear the loss actually sustained, and can be liable to no more. So that if *after condemnation* the owner recovers the ship in her complete condition, but has paid salvage, or been at any expense in getting her back, the insurer must bear the loss so actually sustained" (*a*).

When the insured may abandon.

In this case Lord Mansfield also stated that he knew of no authority, ancient or modern, in which the right of the insured to demand in case of capture as for total loss and to abandon, was denied. And he added, "what proves the proposition most strongly is, that by the general law he may *abandon*, in the case merely of arrest, on an embargo by a prince *not an enemy*."

But in a subsequent case his Lordship explained this to mean that the capture or detention should continue *until the time of abandoning and bringing the action*. In this case a ship was captured on a voyage from Virginia to London, and re-captured a

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(*z*) *Flindt* v. *Scott*, 5 Taunt. 696.
(*a*) *Goss* v. *Withers*, 2 Burr. 694.

few days afterwards, and brought in safety with her entire cargo to her port of destination by the captor: and it was held that the insured had no right to abandon (*b*).

So in another case, a ship was captured on a voyage from Jamaica to Liverpool, and immediately upon receiving intelligence of the fact, the insured gave notice to the underwriters of their intention to abandon. A few days after the capture the ship was re-captured, and afterwards brought safely to Liverpool. The insured, notwithstanding, persisted in their abandonment of the ship; but it was held that they were not entitled to do so (*c*).

Voyage must be defeated.

It would appear, therefore, that the capture or detention must be such as to defeat the purpose of the voyage before the insured is entitled to abandon.

Notice of abandonment.

When the insured intends to abandon, he must give speedy notice of his intention to the underwriters (*d*). A delay of three weeks has been held to bar his right to abandon, and to claim for a total loss (*e*).

Sale of ship and cargo.

If, after a capture and a re-capture, the captain finds that the voyage cannot be continued, and acting fairly for the advantage of all concerned, he sell the ship and the cargo to pay the necessary expenses, the insured may abandon and recover for the total loss (*f*). In this case Lord Mansfield told the jury that if they were satisfied that the captain had done what was *best for the benefit of all concerned*, they must find for a total loss. But it is clearly

(*b*) *Hamilton* v. *Mendes*, 2 Burr. 1198.

(*c*) *Bainbridge* v. *Wilson*, 10 East, 329. See also *Patterson* v. *Ritchie*, 4 M. & S. 393. *Brotherston* v. *Barber*, 5 M. & S. 418. *Anderson* v. *Wallis*, 2 M. & S. 240.

(*d*) *Allwood* v. *Henkel*, at N. P., B. R. Mich. 1795. Marshall on Insurance, 3rd ed. p. 604.

(*e*) *Anderson* v. *Royal Exchange Assurance Company*, 7 East, 38.

(*f*) *Milles* v. *Fletcher*, Doug. 231.

settled that the captain will only be justified in selling the ship and cargo in case of absolute necessity (*a*).

It has also been held that where a capture has been made, whether it be legal or not, the insurer is liable for the charges of a compromise made *bonâ fide* to prevent the ship from being condemned as prize (*b*).

An insurance against British capture is only void *pro tanto*, and will not render the entire policy invalid (*c*).

If a ship, though neutral, be insured on a voyage prohibited by an embargo imposed, in time of war, by the government of the country where the ship happens to be, such insurance is void. In a case where this question arose Lord Mansfield said, "She—'the vessel'—breaks an embargo. What the consequence of that is has not as yet been settled; but to break an embargo is undoubtedly a criminal act; and wherever a man makes an illegal contract, this court will not lend him their aid" (*d*).

Breaking an embargo.

Loss by detention.

If a neutral ship is carried to a belligerent port, and detained there for the purpose of being searched, the charges consequent upon this interruption of the voyage fall upon the underwriter (*e*). But the wages of the crew, and the cost of provisioning the ship, are paid by the owner, because an embargo or other temporary detention does not, like capture, put an end to the contract of affreight-

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(*a*) *Underwood* v. *Robertson*, 4 Camp. 138. *Wilson* v. *Millar*, 2 Stark. N. P. Rep. 1. *Idle* v. *The Royal Exchange Assurance Company*, 8 Taunt. 755. *The Gratitudine*, 5 Rob. Ad. Rep. 240.

(*b*) Park on Insurance, c. 4, and authorities there cited.

(*c*) *Glover* v. *Cowie*, 1 M. & S. 52. *Lubbock* v. *Potts*, 7 East, 449.

(*d*) *Delmada* v. *Motteaux*, B. R. Mich. 25 Geo. 3.

(*e*) Park, p. 125. *Salaucci* v. *Johnson*, B. R. Hil. 25 Geo. 3.

ment (*f*). And the underwriter will not be liable in cases where the insured shall violate the laws of the country in which his ship may be detained, or where there shall be a seizure for non-payment of customs (*g*).

If an insured vessel, on arriving off her port of destination, is prevented from entering from its being in the hands of the enemy, the policy does not remain in force till she reaches a port of safety (*h*).

A policy "to any port or ports in the Baltic" has been held valid, although some of these were, at the time, in possession of the enemy (*i*).

Insurance of contraband.

All policies of insurance on articles contraband of war are void, and incapable of being enforced in the courts of a belligerent country (*k*). But if effected by or for neutrals, and sought to be enforced in the courts of a neutral state, it appears that such a contract would be sustained (*l*).

In time of war it is often stipulated in the policy that the vessel shall sail under the protection of convoy; and this condition must in such case be faithfully observed, to enable the insured to recover in case of loss or damage (*m*).

(*f*) *Eden* v. *Poole*, see Park, p. 91.
(*g*) 2 Vern. 176.
(*h*) *Parkin* v. *Tunno*, 2 Camp. 58.
(*i*) *Wright* v. *Welbie*, 1 Chitt. 49.
(*k*) *Gibson* v. *Service*, 5 Taunt. 433. Marshall on Insurance, 75.
(*l*) Kent Comm. vol. 3, p. 267.
(*m*) Marshall on Insurance, 366, and cases there cited.

APPENDIX.

1.—THE PRIZE PROCLAMATION.

BY THE QUEEN—A PROCLAMATION.

Victoria R.—Whereas by our Order in Council, bearing date the twenty-ninth day of March, one thousand eight hundred and fifty-four, We have ordered that general reprisals be granted against the ships, goods, and subjects of the Emperor of all the Russias, his subjects, or others inhabiting within any of his countries, territories, or dominions (save and except any vessels to which our licence has been or may be granted, or which have been directed to be released from the embargo, and have not since arrived at any foreign port), so that our fleets and ships shall and may lawfully seize all ships, vessels, and goods belonging to the Emperor of all the Russias or his subjects, or others inhabiting within any of his countries, territories, or dominions, and bring the same to judgment in any of the Courts of Admiralty within our dominions, duly authorized and required to take cognizance thereof, we do hereby order and direct that the net produce of all such prizes taken by any of our ships or vessels of war (save and except when they shall be acting on any conjunct expedition with our army, in which case we reserve to ourselves the division and distribution of all prize and booty taken, and also, save and except as hereinafter mentioned), shall be for the entire benefit and encouragement of our flag officers, captains, commanders, and other commissioned officers in our pay: and of all subordinate, warrant, petty, and non-commissioned officers, and of the seamen, marines, and soldiers on board our said ships and vessels at the time of the capture, after the same shall have been to us finally adjudged lawful prize.

Whenever any prize shall be taken by any of our fleets, squadrons, ships, or vessels of war, whilst acting in conjunction with any fleet, squadron, ships or vessels of war belonging to any other power or powers in alliance with us, our High Court of Admiralty, or the Vice-Admiralty Court within our dominions adjudicating thereon, shall apportion

to such ally or allies a share or shares of the proceeds of such prize or prizes, proportionate to the number of officers and men, &c., present and employed on the part of such ally or allies, as compared with the number of officers and men, &c., present and employed on our behalf in such capture or captures, without reference to their respective ranks; and the share or shares so set apart for such ally or allies shall be transmitted to such persons as may be duly authorized on behalf of such ally or allies to receive the same.

Ships or vessels being in sight of the prize, as also of the captor, under circumstances to cause intimidation to the enemy and encouragement to the captor, shall be alone entitled to share as joint captors.

After having deducted the portion set apart as aforesaid for our allies, a distribution, so far as regards her Majesty's forces, shall be as follows:—

The flag officer or officers shall have one-twentieth part of the whole net proceeds arising from prizes captured from the enemy, by any of the ships or vessels under his or their command, and of the rewards conferred for the same according to the following conditions and modifications, save and except as hereinafter provided and directed, that is to say:—

When there is but one flag officer, he shall have the entire one-twentieth part; when two flag officers shall be sharing together, the chief shall have two-thirds, and the other flag officer shall have the remaining one-third of the one-twentieth part; and when there shall be more than two flag officers, the chief shall have one-half of the said one-twentieth part, and the remaining half shall be equally divided among the junior flag officers. Commodores of the first class, and captains of the fleet, to share as flag officers, provided always that no flag officer, unless actually on board any of our ships or vessels of war, and at the actual taking, sinking, burning, or otherwise destroying any ship or ships of war, privateer or privateers, belonging to the enemy, shall share in the distribution of any head money or bounty money granted as a reward for taking, sinking, burning, or otherwise destroying any such ship or vessel of the enemy.

That no flag officer commanding in any port in the United Kingdom shall share in the proceeds of any prize captured from the enemy, by any ship or vessel which shall sail from or leave such port by order of the Lord High Admiral, or of our Commissioners for executing the office of Lord High Admiral.

That when ships or vessels under the command of several

flag officers belonging to separate stations shall be joint captors, each flag officer shall receive a proportion of the one-twentieth part, according to the number of officers and men present under the command of each such flag officer: and when any ship or vessel under orders from the Lord High Admiral, or from our Commissioners for executing the office of Lord High Admiral, are joint captors with other ships or vessels, under a flag or flags, the like regulations as to the apportionment of the flag share to the flag officer or officers is to be observed.

With reference to flag officers, it is to be noted, that when an inferior flag officer is sent to reinforce a superior officer on any station, the superior flag officer shall not share in any prize taken by the inferior flag officer before he has arrived within the limits of that station, unless the inferior officer shall have received some order directly from, and shall be acting in execution of some order issued by, such superior flag officer.

No chief flag officer quitting any station, except upon some definite urgent service, and with the intention of returning to the station as soon as such service is performed, shall share in any prize taken by our ships or vessels left behind, after he has passed the limits of the station, or after he has surrendered the command to another flag officer appointed by the Admiralty to command in chief upon such station.

An inferior flag officer quitting any station (except when detached by orders from his commander-in-chief upon a special service, accompanied with orders to return to such station as soon as the service has been performed), shall have no share in prizes taken by the ships and vessels remaining on the station, after he has passed the limits thereof. In like manner, flag officers remaining on such station shall not share in the prizes taken by such inferior officer, or by ships or vessels under his immediate command, after he has quitted the limits of the station, except he has been detached as aforesaid.

A commander-in-chief, or other flag officer, belonging to any station shall not share in any prize or prizes taken out of the limits of that station by any ship or vessel under the command of a flag officer of any other station, or under orders from our Commissioners of the Admiralty, unless such commander-in-chief or flag officer is expressly authorized by our said Commissioners to take the command of that station in which the prize or prizes is or are taken, and shall actually have taken upon him such command.

Every commodore having a captain under him shall be esteemed a flag officer with respect to the twentieth part of prizes taken, whether he be commanding in chief, or serving under command.

The first captain to the admiral and commander-in-chief of our fleet, and also the first captain to any flag officer appointed to command a fleet of ten ships of the line or upwards, shall be deemed to be a flag officer for the purpose of sharing in prize, and shall be entitled to share therein as the junior flag officer of such fleet.

Any officer on board any of our ships of war at the time of capturing any prize or prizes, who shall have more commissions than one, shall be entitled only to share in such prize or prizes according to the share allotted to him by the above mentioned distribution in respect to his superior commission or office.

And with reference to other officers it is to be noted,—that a captain, commander, or other commanding officer of a ship or vessel, shall be deemed to be under the command of a flag officer when he shall have received some order from, or be acting in the execution of some order issued by, a flag officer, whether he be or be not within the limits of the station of such flag officer; and in the event of his being directed to join a flag officer on any station, he shall be deemed to be under the command of such flag officer from the time when he arrives within the limits of the station, which circumstance is always to be carefully noted in the log book; and it shall be considered that he continues under the flag officer of such station until he shall have received some order directly from, or be acting in the execution of some order issued by some other flag officer, duly authorized, or by the Lord High Admiral, or our Commissioners for executing the office of Lord High Admiral.

And we hereby direct, that the captain, commander, lieutenant commanding, master commanding, or any other officer, duly commanding any ship, sloop, or vessel of war, singly taking any prize from the enemy, that is to say, the officer actually in command at the time, shall have one-eighth of the remainder, or if there is no flag, one-eighth of the entire net proceeds, except that if the single capturing ship be a rated ship, having a commander under the captain, the commander shall take a portion of the one-eighth part, as if he were commander of a sloop, according to the proportion hereinafter set forth; and if more than one commanding officer of the same rank of command shall be entitled to share as joint captors, the one-eighth shall be equally

divided between them; but when captains, commanders, lieutenants commanding, and masters commanding respectively our ships and vessels of war, and commanders under captains in rated ships, shall share together in whatever variety of combination, the one-eighth shall be so divided into parts for a graduated apportionment as to provide for each captain receiving six parts; each commander of a sloop, or commander under a captain in a rated ship, three parts; and each lieutenant commanding, or master commanding, or other officer actually commanding a small vessel of war, two parts; which we hereby direct shall be the proportion in which they shall respectively share; commodores of the second class and field officers of marines, or of land forces serving as marines, doing duty as field officers, above the rank of major, to share as captains; and field officers of marines, or of land forces serving as marines; and doing duty in the rank of major, to share as commander of sloops.

And we further direct, that after provision shall thus have been made for the flag share (if any), and for the portion of the commanding officer or officers, and others, as above specified, the remainder of the net proceeds shall be distributed in ten classes, so that each officer, man, and boy, composing the rest of the complements of our ships, sloops, and vessels of war, and actually on board at the time of any such capture, and every person present and assisting, shall receive shares or a share according to his class, as set forth in the following scale:—

First Class.—Master of the fleet, inspector of steam machinery afloat, when embarked with a fleet, medical inspector, or deputy medical inspector, when embarked with a fleet, —45 shares each.

Second Class.—Senior lieutenants of a rated ship, not bearing a commander, under the captain, secretary to the admiral of the fleet or admiral commanding in chief— 35 shares each.

Third Class.—Sea lieutenant, master, captain of marines, of marine artillery, or of land forces doing duty as marines, whether having higher brevet rank or not, secretary to an admiral, or to a commodore of the first class, not commanding in chief, chief engineer—28 shares each.

Fourth Class.—Lieutenant or quartermaster of marines, lieutenant of marine artillery, lieutenant, quartermaster, or ensign, of land forces doing duty as marines, secretary to a commodore of the second class, chaplain, surgeon, paymaster, naval instructor, mate, assistant-surgeon, second master, clerk in charge, passed clerk,

assistant engineer, gunner, boatswain, carpenter—18 shares each.

Fifth Class.—Midshipman, master's assistant pilot, clerk (not passed), master-at-arms, chief gunner's mate, chief boatswain's mate, chief carpenter's mate, chief captain of the forecastle, admiral's coxswain, chief quartermaster, seamen's school master, ship's steward, ship's cook—10 shares each.

Sixth Class.—Naval cadet's, clerk's assistant, captain's coxswain, ship's corporal, quartermaster, gunner's mate, boatswain's mate, captain of the forecastle, captain of the after-guard, captain of the hold, captain of the maintop, captain of the foretop, coxswain of the launch, sailmaker, ropemaker, caulker, leading stocker, blacksmith, sergeant of marines, of marine artillery, or of land forces doing duty as marines—Nine shares each.

Seventh Class.—Captain of the mast, captain of the mizen-top, yeoman of the signals, coxswain of the barge, coxswain of the pinnace, coxswain of the cutter, second captain of the forecastle, second captain of the maintop, second captain of the foretop, second captain of the after guard, sailmaker's mate, caulker's mate, musician, cooper, armourer, corporal of marines or of land forces doing duty as marines, bombardier of marine artillery, head krooman—Six shares each.

Eighth Class.—Leading seamen, shipwright, second captain of the hold, able seaman, carpenter's crew, sailmaker's crew, cooper's crew, armourer's crew, yeoman of the store rooms, steward's assistant, ordinary seaman, blacksmith's mate, private and fifer of marines, or of land forces doing duty as marines, gunner of marine artillery, painter, stoker, coal trimmer, second head krooman, sick berth attendant bandsman, tailor, butcher—Three shares each.

Ninth Class.—Cook's mate, ship's steward's boy, admiral's domestic, superintendent's domestic, admiral's steward and cook, captain's steward and cook, ward-room and gun-room steward and cook, subordinate officers' steward and cook, commander's servant, secretary's servant, second class ordinary seaman, assistant stoker, barber, boy of the first class, first and second class krooman, supernumeraries, except as hereinafter provided, persons borne merely as passengers, and not declining to render assistance on occasion of capture—Two shares each.

Tenth Class.—Boy below first class—One share.

All supernumeraries holding ranks in the service above the ranks or ratings specified in the fifth class of this our proclamation who have been ordered to do duty in any of our ships or vessels, by the Lord High Admiral, or by our

Commissioners for executing the office of Lord High Admiral, by the senior officer of the fleet or squadron, or if none senior, then by the captain or commanding officer of the capturing ship or vessel, if not by special authority employed in higher capacities, shall share according to the rank which they respectively hold in the service; but in all cases to qualify them for so sharing, and not merely as supernumeraries in the ninth class, due notation of their being thus respectively ordered to do duty must have been made on the muster books.

And with respect to supernumeraries of ratings in the service, below the denominations of those specified in the fourth class of this our proclamation, and who at full victuals are engaged in the ordinary duties of the ship, it is our will and pleasure that they shall always share according to the ratings which they bear in the service.

And, in order that our Royal intentions herein may be duly carried into effect, we further direct that when any capture is made from the enemy, the captains or commanding officers of our ships or vessels of war making the same shall transmit, or cause to be transmitted, as soon as may be, to the Secretary to the Admiralty, a true and perfect list of all the officers, seamen, and marines, soldiers, and others, who were actually on board on the occasion, accompanied by a separate list, containing the names of those belonging to the crew who were absent on duty or otherwise at the time, specifying the cause of such absence, each list to contain the quality of the service of each person, together with the respective descriptions of men, taken from the description book of the ship or vessel, and their several ratings, to be subscribed by the captain or commanding officer, and three or four more of the chief officers on board.

And when the list of those actually on board, and the separate list of persons absent, though belonging to the ship or vessel, shall have been verified, on examination with the muster books lodged as official records, the Accountant-General of our Navy shall, upon request, grant to the agent or agents, nominated or appointed by the captors, a certificate that such lists are correct, or have been corrected, as occasion may require, in order that distribution of the prize or other proceeds may be duly made.

And in the event of difficulty arising with respect to any of the regulations hereby ordered, or if any case should occur not herein provided for, or not sufficiently provided for, we are pleased hereby to authorize the Lord High Admiral, or our Commissioners for executing the office of Lord High

Admiral, for the time being, to issue such directions thereupon as may appear just and expedient, which directions shall have the same force and effect as if specially provided for in this our Royal Proclamation.

Given at our Court at Buckingham Palace, this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventeenth year of our Reign.

GOD SAVE THE QUEEN.

THE BRITISH AND FRENCH CONVENTION WITH REGARD TO PRIZES.

(Translated from the "Moniteur" of 25th May 1854.

NAPOLEON,

By the grace of God, and the national will, Emperor of the French,

To all present and to come, greeting:

On the report of our Minister, the Secretary of State for Foreign Affairs,

We have decreed and decree as follows:—

Art. 1. A treaty, followed by a rider, having been concluded on the 10th of May of the present year, 1854, between France and the United Kingdom of Great Britain and Ireland, for regulating the mode of judging and sharing the prizes made during the course of the present war: and the acts of ratification having been respectively exchanged on the 20th of the same month, the said treaty, the tenor of which follows, shall receive its full and entire execution.

His Majesty the Emperor of the French and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, wishing to determine the jurisdiction, to which the adjudication of the prizes will have to belong that during the present war may be made in common by the naval forces of the two nations, or of the prizes that may be made on merchant vessels belonging to the subjects of one of the two countries by the cruisers of the other, and wishing to regulate at the same time the division of the produce of the prizes made in common, have named for their plenipotentiaries, to wit:

His Majesty the Emperor of the French, the Sieur Alexandre Colonna, Count Walewski, grand officer of the Imperial Order of the Legion of Honour, Grand Cross of the

Order of St. Januarius of the Two Sicilies, Grand Cross of the Order of the Danebrog of Denmark, Grand Cross of the Order of Merit of St. Joseph of Tuscany, &c., his ambassador at the court of her Britannic Majesty:

And her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Hon. George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, Peer of the United Kingdom, Privy Councillor of her Britannic Majesty, Knight of the most noble Order of the Garter, Knight Grand Cross of the most noble Order of the Bath, principal Secretary of State of her Britannic Majesty for Foreign Affairs.

Who, having exchanged their full powers, found to be in due form, have agreed on the following articles:

Art. 1. When a prize shall be made in common by the naval forces of the two countries, the adjudication of it shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

Art. 2. When a prize shall be made by a cruiser of one of the two allied nations, in presence and in sight of a cruiser of the other, which shall have thus contributed to intimidate the enemy and encourage the captor, the adjudication of it shall belong to the jurisdiction of the actual captor.

Art. 3. In case of the capture of a merchant vessel belonging to one of the two countries, the adjudication of it shall always belong to the jurisdiction of the country to which the captured vessel belongs; the cargo, in so far as the adjudication is concerned, shall share the lot of the vessel itself.

Art. 4. In case of condemnation in the circumstances foreseen by the preceding articles:

1st. If the capture has been made by ships of the two nations acting in common, the net produce of the prizes, deduction having been made for the necessary expenses, shall be divided into so many portions as there shall have been men on board of the capturing ships, without taking rank into account; and the portions coming to the men on board the vessels of the allied nation shall be paid and delivered to the person duly authorized by the allied government to receive them; and the distribution of the sums coming to the respective vessels shall be made through each government, according to the laws and regulations of the country.

2ndly. If the prize has been made by the cruisers of one of the two allied nations, in presence and in sight of a cruiser of the other, the division, payment, and distribution of the

net produce of the prize, deduction having been made of the necessary expenses, shall equally take place in the manner above mentioned.

3rdly. If the prize made by a cruiser of one of the two countries has been adjudicated by the tribunals of the other, the net produce of the prize, deduction having been made for necessary expenses, shall be handed over in like manner to the government of the captor, in order to be distributed conformably to its laws and regulations.

Art. 5. The commanders of the vessels of war of their Majesties will conform, in conducting and handing over the prizes, to the instructions appended to the present treaty, and which the two governments reserve to themselves the right of modifying, if occasion requires, with common consent.

Art. 6. When, for the execution of the present convention, there shall be occasion to proceed to the estimation of a captured man of war, this estimation shall bear upon its effective value, and the government shall have the right to appoint one or more competent officers to take part in the estimation. In case of disagreement, drawing lots shall decide what officer is to have the casting vote.

Art. 7. The crews of the captured vessels shall be treated according to the laws and regulations of the country to which the present convention assigns the adjudication of the capture.

Art. 8. The present convention shall be ratified, and the ratifications thereof shall be exchanged at London within the term of ten days' delay, or sooner if possible.

In faith of which, the respective plenipotentiaries have signed the present convention, and have affixed to it the seals of their arms.

Done at London, the tenth day of the month of May, in the year of our Lord one thousand eight hundred and fifty-four.

(Signed) A. WALEWSKI. (L.S.) (Signed) CLARENDON. (L.S.)

Rider to the convention between France and Great Britain, signed at London, the 10th of May, 1854.

Instructions for the commanders of vessels of war belonging to his Majesty the Emperor of the French, and her Majesty the Queen of the United Kingdom of Great Britain and Ireland.

You will find subjoined the copy of a convention, signed

on the 10th of this month, between his Majesty the Emperor of the French and her Majesty the Queen of the United Kingdom of Great Britain and Ireland, for regulating the jurisdiction, to which will have to pertain the adjudication of the prizes made in common by the allied naval forces, or made upon merchant vessels belonging to the subjects of one of the two states by the cruisers of the other, as likewise the mode of distributing the prizes made in common.

To insure the execution of this convention, you will have to conform to the following instructions:

Art. 1. When, in consequence of an action in common, it will devolve upon you to draw up the report, or the full particulars of a capture, you will take care to give accurately the names of the vessels of war present at the action, as likewise those of their commanders, and in so far as it is possible the number of men embarked on board of those vessels at the commencement of the action, without distinction of rank.

You will hand over a copy of this report or proces-verbal to the officer of the allied powers who will have had the superior command during the action, and you will conform to the instructions of this officer in what concerns the measures to be taken for conducting and adjudicating the prizes so made in common under his command.

If the action has been under the command of an officer of your nation, you will conform to the regulations of your own country, and you will confine yourself to delivering to the officer of superior rank of the allied Power present at the action a certified copy of the report or proceedings such as you will have drawn up.

Art. 2. When you shall have effected a capture in presence and in sight of an allied man-of-war, you will state accurately in your report whether it is a vessel of war or a merchant vessel, the number of men you had on board at the beginning of the action, without distinction of rank, as well as the name of the allied vessel of war that was in sight, and, if it be possible, the number of men embarked on board of her, also without distinction of rank. You will present a certified copy of your report or account to the commander of that vessel.

Art. 3. When, in case of a violation of a blockade, of transporting objects of contraband [of war], land or naval troops of the enemy, or official despatches from or for the enemy, you shall be enabled to arrest or seize a merchant vessel of the allied country, you will have:

1st. To draw up a detailed account specifying the place,

date, and motive of the arrest, the name of the vessel, that of the captain, the number of the crew, and containing moreover the exact description of the state of the vessel and her cargo.

2dly. To put together in a sealed envelope, after having the inventory of them, all the papers on board, such as acts of nationality or property, passports, charter parties, bills of lading, invoices, and other documents proper for verifying the nature and property of the vessel and her cargo.

3rdly. To place seals on the hatches.

4thly. To place on board an officer with such number of men as you shall deem requisite for taking charge of the vessel, and ensuring its safe arrival.

5thly. To send the vessel to the nearest port of the power whose flag she sailed under.

6thly. To cause the vessel to be delivered over to the authorities of the port you send her to, together with a despatch of the specified account and the inventory above mentioned, and, with the sealed envelope, containing the papers on board.

Art. 4. The officer in charge of a captured vessel shall cause to be delivered to him a receipt declaratory of what he shall have transferred, as likewise of the delivery by him of the sealed envelope, of the despatch of the specified account and inventory above mentioned.

Art. 5. In cases of distress, if the captured vessel is unable to continue her route, the officer charged with taking into a port of the allied Power a prize made on the merchant navy of that Power, shall be able to enter a port of his own country, or a neutral harbour; and he shall hand over his prize to the local authorities, if he enters a port of his own country; and to the consul of the allied nation, if he enters a neutral port, without prejudice to the ulterior measures to be taken relative to the adjudication of the prize. He will take care in that case that the report or specification and the inventory drawn up by him, as also the sealed parcel containing the papers on board, shall be duly forwarded to the jurisdiction charged with the adjudication.

Art. 6. You will not consider as prisoners, and you will allow freely to disembark, the women, the children, and the persons not following the trade of arms or the nautical profession, who may be on board of the vessels arrested.

Saving this exception, and such as the care of your safety shall suggest to you, you will not remove any individual from the vessel; in every case you will keep on board the

captain, the supercargo, and those whose evidence will be essential for the adjudication of the prize.

You will treat as prisoners of war, save the exception above mentioned at paragraph 1, all individuals whatsoever, found on board hostile vessels.

You will not impose on the liberty of the allied or neutral subjects, found on board hostile or neutral vessels, any restriction beyond what may be necessary for the safety of the vessel.

As for your own countrymen, you will treat them in conformity with the general instructions you are provided with, and in no case will you have to surrender them to foreign jurisdiction.

The men removed exceptionally from on board the captured vessels, will have subsequently to be sent back to their own country, if they belong to the allied nation; and if they are neutrals or enemies, they will be treated as if they had been found in captured vessels by yourself alone.

(Signed) A. WALEWSKI (L.S.)
CLARENDON (L.S.).

Art. 2. Our Ministers the Secretaries of State for the departments of Foreign Affairs and the Navy and the Colonies are charged, each in so far as it concerns him, with the execution of the present decree.

Done at St. Cloud, May 23, 1854.

NAPOLEON.

Seen and sealed with the State Seal.

By the Emperor.

The Keeper of the Seals, Minister of Justice,
ABBATUCCI.

The Minister of Foreign Affairs,
DROUYN DE LHUYS.

No. 2.—CONTRABAND.

The following order, respecting the exportation of articles contraband of war, was published at Hamburgh on the 11th of April, 1854.

"In consequence of the existing state of war between Turkey, France, and Great Britain on the one hand, and Russia on the other hand, the Senate has determined, for the protection of the interests of the trade and navigation of this city, to make and publish the following enactments:—

"1. The exportation of articles contraband of war to the powers now at war, or to their subjects is prohibited.

"2. Articles contraband of war consist of arms, ordnance, firearms, and ammunition of every description, but furthermore particularly powder, balls (*kugeln*), rockets, fusees (*zundhutchen*), and all other material used immediately in war, as also saltpetre, brimstone and lead.

"3. The transgression of the present order will be followed by a confiscation of the articles contraband of war, and those who are guilty of such transgression, or are accessory to it, will be moreover punished with severity.

"Decreed at Lubeck, at a meeting of the Senate, on the 10th day of April, 1854.

"C. T. OVERBECK, Secretary.

"NOTICE.

"In consequence of the war which has broken out between several of the Great European Powers, the Council (*Rath*) feels called upon, as a preliminary, to make the following orders with respect to the intercourse with the harbours and places of the belligerent States:—

"The exportation of all articles deemed contraband of war, or which are understood to be such by the law of nations and the existing Hamburg State treaties, as also the exportation of ammunition, moreover of powder, saltpetre, brimstone, balls (*kugeln*), fusees (*zundhutchen*), and also all description of arms, and generally all such articles as can be immediately used in war, is forbidden from the day of the

date of the proclamation equally under the Hamburg and foreign flags or by land to the States of those Powers now engaged in war.

"Whosoever acts in contravention of this order, be it as owner or master of the vessel, or as exporter of the goods, will incur not only the confiscation of the before-named articles, but will also be further punished by a heavy fine and by imprisonment, according to circumstances. In order that a necessary control may be exercised over all exportations to the States at war, the articles must be accurately specified, and the superscription, 'merchandise,' or any similar general description, will not be admitted.

"No captain or master of a ship sailing under the Hamburg flag must violate a blockade, or after such (blockade) has been duly notified to him sail through clandestinely; nor must he either carry two sets of ship's papers or bear a foreign flag, so long as he is in possession of Hamburg ship's papers (*shiffs-passe*).

"Whosoever may require to know more respecting the orders and notices with reference to navigation and trade of neutrals, as issued by the belligerent states, must address themselves to the Department of Commerce (*Commerce Comptoir*).

"Given in our Assembly of Council, Hamburg, the 10th of April, 1854."

No. 3.—ORDER IN COUNCIL OF 15TH APRIL, 1854.

At the Court at Windsor, the 15th day of April, 1854; present, the Queen's Most Excellent Majesty in Council.

Whereas her Majesty was graciously pleased, on the 28th day of March last, to issue her royal declaration in the following terms:—

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the powers with whom she remains at peace.

"To preserve the commerce of neutrals from all unnecessary obstruction, her Majesty is willing for the present, to waive a part of the belligerent rights appertaining to her by the law of nations.

"It is impossible for her Majesty to forego the exercise

of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches, and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be established with an adequate force against the enemy's forts, harbours, or coasts.

"But her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel, unless it be contraband of war.

"It is not her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships; and her Majesty further declares that, being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organized forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers."

Now it is this day ordered, by and with the advice of her Privy Council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions all goods and merchandise whatsoever, to whomsoever the same may belong, and to export from any port or place in her Majesty's dominions to any port not blockaded any cargo or goods, not being contraband of war, or not requiring a special permission, to whomsoever the same may belong.

And her Majesty is further pleased, by and with the advice of her Privy Council, to order, and it is hereby further ordered, that, save and except only as aforesaid, all the subjects of her Majesty and the subjects or citizens of any neutral or friendly state shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate, which shall not be in a state of blockade, save and except that no British vessel shall under any circumstances whatsoever, either under or by virtue of this order, or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession or occupation of her Majesty's enemies.

And the Right Hon. the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, the Lord Warden of the Cinque Ports, and her Majesty's Principal Secretary of State for War and the Colonies, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

No. 4.—EXPORTATION OF PROHIBITED STORES OF WAR.

At the Council Chamber, Whitehall, April 11th, 1854. By the Lords of her Majesty's Most Hon. Privy Council.

The Lords of the Council having taken into consideration certain applications for leave to export arms, ammunition, military and naval stores, &c., being articles of which the exportation is prohibited by her Majesty's proclamation of February the 18th, 1854, their Lordships are pleased to order, and it is hereby ordered, that permission should be granted by the Lords Commissioners of her Majesty's Treasury to export the articles so prohibited, to be carried coastwise to ports in the United Kingdom, and likewise to all places in North and South America, except the Russian possessions in North America; to the coast of Africa, west of the Straits of Gibraltar, and round the south and east coast of Africa; to the whole coast of Asia not within the Mediterranean Sea or the Persian Gulf, and not being part of the Russian territories; to the whole of Australia, and to all British colonies within the limits aforesaid, upon taking a bond from the persons exporting such prohibited articles that they shall be landed and entered at the port of destination; and that all further permission to export such articles to other parts of the world be only granted upon application to the Lords of the Council at this board.

At the Council Chamber, Whitehall, the 24th day of April, 1854.

By the Lords of her Majesty's Most Honourable Privy Council.

The Lords of the Council, having taken into consideration certain applications for leave to export various articles, of which the exportation is prohibited by her Majesty's Proclamation of the 18th February, 1854, are pleased to order, and it is hereby ordered, that the officers of her Majesty's Customs do not hereafter prevent the export of any articles except only—

Gunpowder, saltpetre, and brimstone.

Arms and ammunition.

Marine engines and boilers, and the component parts thereof.

And that such last-named articles be prohibited from export only when destined to any place in Europe north of Dunkirk, or to any place in the Mediterranean Sea east of Malta; and that the officers of her Majesty's Customs do permit the export of the said enumerated articles to any other part of the world, upon taking, from the persons exporting the same, a bond that they shall be landed and entered at the port of destination.

Whereof the Lords Commissioners of her Majesty's Treasury, and officers of her Majesty's Customs, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

C. C. GREVILLE.

No. 5.—DECLARATION OF RUSSIA.

(*From the London Gazette of 2nd May*, 1854.)

In consequence of the information received of the declaration of war against Russia by England and France, the Ministry of Finance considers it its duty to make universally known the measures which will be adopted by the imperial government, with respect to the English and French subjects, their mercantile vessels and property.

In conformity with the declarations of the English and French governments, the imperial government has, in its sincere desire to remove, as much as possible, from private individuals, the ruinous consequences of war, established the following rules:—

A term of six weeks shall be allowed to English and French vessels, at present in our harbours, to load and sail without hindrance to foreign ports. This term will count from the 25th April, in the ports of the Black Sea, the Sea of Azoff, and the Baltic; but in the White Sea from the day on which the navigation opens.

As an exception to this rule, for military considerations, two English vessels, *The Ann Macalister* and *The William Broderick*, of which the former is lying at Cronstadt, and the latter at Revel, will be detained for a certain period; these vessels will not, under any circumstances, be liable to confiscation, and will eventually be released, as soon as circumstances render practicable.

English and French merchant vessels which may, after leaving our ports, be met at sea by our cruisers after the expiration of the term appointed, will be free to continue their voyage, if, on examination of their ships' papers, it should appear that the cargo on board of these vessels had been taken in before the expiration of the six weeks.

The property of British and French subjects on board neutral vessels will be regarded as inviolable by our cruisers. English and French goods, even should they belong to subjects of Great Britain and France, will be allowed to be imported under neutral flags into our ports, in accordance with the usual Custom House tariff regulations, without any hindrance on our part.

Moreover, the property of neutrals found on board of the enemy's vessels will not be subject to confiscation. But it is self-evident that a neutral flag will not cover such cargoes or articles as, by international law, are considered articles of contraband; in consequence of which, the vessels on which such contraband may be found will be stopped by our cruisers, and declared lawful prizes of war, in conformity with the declaration issued, from the Ministry of Finance, the 27th November, of the foregoing year.

The government of his Imperial Majesty, whilst leaving all its mercantile harbours open to the merchant vessels of neutral countries, can nevertheless not take upon itself any responsibility for injuries and losses which these vessels may sustain from the operations of war.

The Minister of Finance, as far back as the month of October, last year, when rumours of war became prevalent, declared, in the name of his Majesty the Emperor, to the English merchants trading in St. Petersburgh, that, even in case of war, they need have no apprehension either for themselves or their property, and they might depend upon the same protection which they had hitherto enjoyed; such protection and freedom from danger, as far as their persons and property are concerned, will continue to be extended to all British and French subjects, without exception (to whatever trade or profession they may belong), who, quietly attending to their own business, observe the established laws of the country, and refrain from all acts forbidden by them.

Issued with the Commercial Gazette, 7–19 *April*, 1854.

No. 6.—DECLARATION OF SWEDEN.

(From the London Gazette of May 5th, 1854.)

We, Oscar, by the grace of God, King of Sweden and Norway, &c., recognising the necessity, in the face of the collisions threatening to take place between foreign maritime powers, of the rigorous observance by our faithful subjects engaged in trade and navigation, of the obligations and precautions requisite to ensure to the Swedish flag all the rights and privileges appertaining to it, in its quality of neutral, and also with a view to avoiding everything that might render it in any way suspected by the belligerent powers and exposed to insult, have judged it expedient, in repealing previous orders on the subject to decree that the following rules shall be generally observed in future:—

1. In order to be admitted to enjoy the rights and privileges accruing to the Swedish flag, in its neutral quality, every Swedish vessel must be furnished with the documents which by existing ordinances (*a*), are required to prove its nationality, and these documents must always be on board the vessel during its voyages.

2. Captains are strictly forbidden to have double or false papers and bills of lading, or to hoist foreign colours on any occasion or under any pretext whatever.

3. If during the stay of a Swedish vessel at a foreign port, the crew, whether by desertion, death, illness, or any other cause, should be so diminished as not to be sufficient for the working of the vessel, and foreign sailors should be therefore engaged, the preference must be given to the subjects of neutral powers; but in any case the number of the subjects of the belligerent powers on board the ship must not exceed one-third of the total crew. Every change of this nature in the crew of the ship, with the causes which have led to it must be marked by the captain in the ships' books, and the fidelity of the annotation certified by the proper Swedish Consul or Vice Counsel, or if there be no such person at the spot, by the civil authorities, the notary public, or some other person of the same authority; pursuant to the customs of the respective countries.

4. The Swedish vessels in their neutrality may navigate freely to the ports and on the coasts of the nations at war; but the captains must abstain from all attempts

(*a*) The Royal Ordinances of March 1st, 1841, and August 15th, 1831.

to enter a blockaded port, as soon as they have been formally warned of the state of that port by the officer commanding the blockade.

By a blockaded port, is meant a port which is closed by one or more of the enemies' vessels of war, stationed so near that it cannot be entered without evident danger.

5. All merchandize, including property of subjects of the belligerent powers, may be freely carried on board Swedish vessels in their quality of neutrals, with the exception of contraband of war. By contraband of war are meant the following articles, "cannons, mortars, arms of all sorts, bombs, grenades, balls, flints, matches, gunpowder, saltpetre, brimstone, cuirasses, pikes, belts, cartouch boxes, saddles and bridles, as well as all articles serving directly for warlike purposes," excepting always such a quantity of those articles as may be necessary for the defence of the ship and the crew.

In case any changes or additions should be made in the definition of articles composing contraband of war, consequent upon conventions with foreign powers, further notifications will be issued.

6. Every Swedish captain is forbidden to employ the vessel which he commands, in the transport, for any of the belligerent powers, of despatches, troops, or munitions of war, without being forcibly compelled. In this case he should protest formally against such an employment of force.

7. The ships of the belligerent powers may import into, and export from, the ports of Sweden, all commodities and merchandize, provided their importation and exportation be permitted by the general custom-house tariff, with the exception of articles reputed contraband of war.

8. All Swedish subjects are forbidden to arm or equip vessels, as privateers, against any of the belligerent powers, their subjects and property, or to take part in the equipment of vessels intended for that purpose. They are equally forbidden to serve on board any foreign privateer.

9. No foreign privateer shall be allowed to enter a Swedish port, or to stay in our roads. Prizes are not to be taken into Swedish ports, except in cases of proved distress. Our subjects are also forbidden to buy captured effects of any kind from foreign privateers.

10. When a captain, sailing without escort, is met in open sea by any vessel of war of one of the belligerent powers having right to examine his ship's papers, he must neither refuse nor endeavour to avoid the search, but he is bound to produce his papers loyally and without evasion, and to take care that none of the documents concerning the

ship or its cargo be abstracted or thrown into the sea, either after the vessel is hailed or during the search.

11. When merchant vessels sail under escort of vessels of war, the captains must act in conformity with the prescriptions of the Royal ordinance of 10th June 1812.

12. The captain who observes scrupulously all the above regulations is entitled to enjoy, in accordance with treaties and the law of nations, full and uninterrupted navigation; and if he be, notwithstanding, molested, he has a right to expect the most energetic support on the part of our ministers and consuls abroad in all his just attempts to obtain reparation and indemnification; whereas the captain who omits or neglects to observe what is above prescribed for his guidance, will only have himself to blame for the unpleasant consequences of his negligence, without hope of our support or protection.

13. In case of the seizure of a Swedish vessel, the captain should remit to the Swedish consul or vice-consul, if there be one in the port where his ship has been brought, or in default to the nearest Swedish consul or vice-consul, a faithful and duly certified report of the circumstances of the capture, with all its details.

We direct and order all those whom it may concern to conform themselves exactly to the above. In faith of which we have signed the present with our hand, and have affixed thereto our royal seal.

Given at the Castle of Stockholm, 8th April 1854.

OSCAR (L.S.)

No. 7.—BLOCKADE OF RUSSIAN PORTS.

On the 1st of June last, the first Lord of the Admiralty (Sir J. Graham), in reply to a question put in the House of Commons, is reported to have said, "Distinct orders have been sent by the Governments of France and England to institute a blockade of the principal Russian ports, both in the Baltic and the Black Sea; and the effect of that blockade will apply to ships of all nations, whether neutral, French or English. No official information has yet been received either from the Baltic or the Black Sea, that those blockades have been instituted, and in the absence of such official information no proclamation has been made either in the *London Gazette*, or on the part of the French Government in

Paris. I had reason to believe, as I stated some days ago, that the blockade of Riga was instituted, but I have not received any direct official information from Sir C. Napier to that effect; and in the absence of that direct official information it was not possible to proclaim the blockade here. In the absence of that central proclamation, a blockade *de facto*, with an efficient force, will be effectual either in the Black Sea or in the Baltic, and it will not admit of the ingress or egress of neutral ships where that blockade shall be established. With reference to Archangel, a squadron of French and English vessels has been sent to the White Sea, but without any orders to blockade the port of Archangel or any other port in the White Sea."—See the *Times* of 2nd June, 1854.

No. 8.—IONIAN VESSELS.

In reply to a question put in the House of Commons on the 2nd of June, as to whether ships sailing under the Ionian flag would be considered neutral in the present war, Lord John Russell said, "The question with regard to the Ionian Islands arose at Constantinople on an application made to the consul of Her Majesty at that port, that vessels sailing under the Ionian flag should be allowed to trade with Russia. The consul thought fit to refuse his sanction, and applied to Her Majesty's ambassador at Constantinople. Lord Stratford de Redcliffe sent the question home, and the Secretaries of State for the Foreign Department and for the Colonial Department were of opinion that vessels sailing under the Ionian flag could not be considered neutral, and that it was impossible to allow them to carry on trade with the ports of Russia. However, the case was referred to the law officers of the Crown of this country, and they having had under their consideration the treaty of Paris, were of opinion that the Ionian Republic being under the protection of her Majesty, could not be considered as a neutral state, and that the Ionian Republic must take part with Great Britian with respect to the war in which she was engaged, though not bound to carry on active measures of warfare. Such had been the result of the opinion given by the law officers of the Crown, and therefore vessels sailing under the Ionian flag were not to be considered as sailing under a neutral flag."—See the *Times* of 3rd June, 1854.

No. 9.—EXPORTS FROM THE CHANNEL ISLANDS AND THE ISLE OF MAN.

(*From the London Gazette of 9th June*, 1854.)

At the Court at Buckingham Palace, the 8th day of June, 1854.

Present, the Queen's Most Excellent Majesty in Council.

Whereas it has appeared expedient and necessary to her Majesty, by and with the advice of her Privy Council, by reason of the hostilities now subsisting between herself and his Imperial Majesty the Emperor of all the Russias, to prohibit the goods hereinafter mentioned to be exported from the islands of Jersey, Guernsey, Alderney, and Sark, and the Isle of Man, except as hereinafter provided:

Her Majesty is pleased, by and with the advice of her Privy Council aforesaid, to order, and it is hereby ordered, that from and after the publication of this order in the said islands respectively, all arms, ammunition, and gunpowder, military and naval stores, and the following articles, being articles deemed capable of being converted into or made useful in increasing the quantity of military or naval stores, that is to say, marine engines, screw propellers, paddle wheels, cylinders, cranks, shafts, boilers, tubes for boilers, boiler plates, fire bars, and every article, or any other component part of an engine or boiler, or any article whatsoever which is, can, or may become applicable for the manufacture of marine machinery, shall be, and the same are hereby prohibited to be exported from the said islands of Jersey, Guernsey, Alderney, and Sark, and the Isle of Man, except with the license of the Governor, or other officer administering the government of any such islands respectively, for that purpose first had and obtained.

And the Lieutenant-Governors of her Majesty's islands of Jersey, Guernsey, Alderney, and Sark, and of the Isle of Man, for the time being, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

INDEX.

THE END.

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